Presidency or Province and District.	Rainfall for week preceding.	State of agricultural prospects.
British Burma—*contd.*		
Rangoon ...	4·39	Total rainfall 4·53 ; 1 death from small-pox, otherwise public health good.
Bassein ...	.....	Three deaths from cholera in town and 6 in one township, otherwise public health good ; cattle-disease in one township.
Prome ...	.....	Public health good.
Amherst (Moulmein) ...	·77	Total rainfall 1·04 inches ; 2 cases of cholera in one township, otherwise public health in Moulmein and district good.
Toungoo ...	·98	Total rainfall ·98 inches ; 3 deaths from small-pox in town.
		General Remarks.—Public health generally satisfactory, a little cholera and small-pox here and there; cattle-disease sporadic and trifling.
Assam—		
Gauhati (April 11th)	No rain	Rain wanted for sowing *ahu ;* weather close and oppressive ; cholera not increasing.
Sylhet („ „)	*Nil*	*Boro* paddy promising well ; cultivation going forward ; more rain wanted ; tea backward ; cholera and small-pox about.
Cachar („ „)	1·0	Weather intensely hot ; the river Barak has never been so low at this season ; public health indifferent ; many cases of small-pox, but not fatal ; common rice $21\frac{4}{16}$ seers per rupee.
Dibrugarh („ „)		Weather warm ; ploughing for *ahu ;* small-pox still reported from North Lakhimpur sub-division ; cholera has broken out in the Sadr sub-division.
Mysore and Coorg—(April 11th)		
Bangalore ...	.....	Paddy and sugarcane continue to be harvested ; prospects favourable.
Mysore ...	·20	Prospects favourable .
Mercara ...	·02	Want of rain for coffee blossoms much felt in North Coorg ; small-pox and fever prevalent in the Mercara and Naujarajapatana taluks
		General Remarks.—Crops in good condition throughout the province ; paddy and sugarcane more or less harvested in all districts ; general health and prospects good ; average ruling prices—rice 12 to 15 seers, *ragi* 30 to 50 seers, and horse-gram 35 to 50 seers per rupee.
Berar & Hyderabad—(April 11th)		
Amráoti ...	.....	Weather rather hot ; ploughing operations in progress ; wheat 16 and *juari* 26 seers per rupee.
Akola ...	.....	Weather rather clear and hot ; preparations for *kharif* sowings continue.
Hyderabad ...	.....	*Tabi* crops prospering ; *rabi* reapings continue ; small-pox and cholera prevail ; cattle-disease prevalent in one taluka ; prices—wheat $16\frac{3}{4}$, coarse rice $10\frac{3}{4}$, white *juari* 24, yellow *juari* $27\frac{3}{4}$, and *tur* $24\frac{1}{4}$ seers per current sicca rupee.
Central India States—(April 11th)		
Indore ...	.....	Weather much warmer ; winds variable ; health and agricultural prospects favourable.
Morar (Gwalior) ...	.....	Health and prospects good ; weather warm.
Sutna ...	.....	Weather hot ; health and prospects good.
Rutlam ...	.....	No report received.
Neemuch ...	.....	Weather seasonable ; public health good ; wheat and grain crops gathered.
Goona ...	.....	Harvesting in progress ; few cases of small-pox, otherwise health good ; wheat 24 seers per rupee.
Bhopal ...	.....	Weather seasonable ; crops and public health good.
Agar ...	.....	Health and prospects good.
Nowgong ...	.....	Weather seasonable ; public health good.
Manpur ...	.....	Health and prospects good.
Rajputana—		
Abu (April 11th)	.....	Weather warm, seasonable, and windy.
Sirohi („ 8th)	.....	Weather seasonable ; wells full ; health good ; yield of barley and corn satisfactory.
Marwar („ 6th)	.....	Tanks all empty, water only obtained from wells with difficulty ; small-pox and other abnormal sickness prevalent to some extent ; crops ripening and in some districts being harvested ; heat increasing ; prices rising slowly.
Meywar („ „)	.....	Tanks and wells fair ; health very good ; crops being harvested.
Harowti („ 7th)	.....	Harvest nearly completed ; heat increasing ; health good.
Jhallawar ...	.....	No report received.
Ajmere (April 10th)	.....	Heat increasing ; crops nearly cut ; harvest above average.
Jeypore („ „)	.....	Harvesting progressing favourably ; health good ; prices steady.
Bhurtpore ...	.....	No report received.
Ulwur (April 10th)	.....	Weather seasonable ; harvesting continues ; small-pox reported only in one tahsil.

E. C. BUCK,
Secy. to the Govt. of India.

Printed and Published for the GOVERNMENT OF INDIA *at the* GOVERNMENT CENTRAL BRANCH PRESS, *Simla.*

SUPPLEMENT TO

The Gazette of India.

Nº 16.] CALCUTTA, SATURDAY, APRIL 21, 1883.

OFFICIAL PAPERS.

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GOVERNMENT OF INDIA.
PUBLIC WORKS DEPARTMENT.
[TELEGRAPH.]

ABSTRACT OF FOREIGN TRAFFIC FOR THE MONTH OF DECEMBER 1882.

CLASS OF MESSAGES.	ROUTE. WEST. Via Teheran. No.	Via Teheran. Indian Value.	Via Turkey. No.	Via Turkey. Indian Value.	Persian Gulf. No.	Persian Gulf. Indian Value.	Via Suez. No.	Via Suez. Indian Value.	EAST. Via Amur. No.	Via Amur. Indian Value.	Via Madras. No.	Via Madras. Indian Value.	Via Rangoon. No.	Via Rangoon. Indian Value.	Native Burma. No.	Native Burma. Indian Value.	Via Paumben. No.	Via Paumben. Indian Value.	TOTAL. No.	TOTAL. Indian Value.
INDIAN.		R a.		R a.		R a.		R a.		R a.		R a.		R a.		R a.		R a.		R a.
Sent	2,803	13,821 12	92	235 7	28	87 2	3,932	6,512 2	...	...	917	3,754 2	116	324 8	420	671 9	1,702	3,231 1	10,010	28,637 11
Received	2,055	12,551 2	152	541 0	52	204 5	3,945	14,976 15	1	10 1	872	2,511 3	193	506 5	...	...	1,788	3,346 14	9,058	34,647 13
TOTAL	4,858	26,372 14	244	776 7	80	291 7	7,877	21,489 1	1	10 1	1,789	6,265 5	309	830 13	420	671 9	3,490	6,577 15	19,068	63,285 8
TRANSIT.																				
From East to West—																				
Received. Vid Madras	236	1,573 14	2	4 14	4	7 14	4,563	9,887 6	...	...	...	...	...	...	...	...	...	...	4,805	11,474 0
" Rangoon	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
" Laingha	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
" Paumben	242	694 11	1	4 2	...	...	203	643 7	...	...	...	...	...	...	...	...	...	...	446	1,342 4
From West to East—																				
Sent. Vid Madras	2,379	9,276 14	82	283 13	1	3 9	2,025	8,277 11	...	...	...	...	...	...	...	...	...	...	4,487	17,841 15
" Rangoon	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
" Laingha	...	...	1	2 10	...	...	2	6 12	...	...	...	...	...	...	...	...	...	...	3	9 6
" Paumben	95	350 1	9	35 4	...	...	236	841 12	...	...	...	...	...	...	...	...	...	...	340	1,227 1
From West to West—																				
Vid Bombay and Karachi	...	...	1	1 14	2	4 8	...	...	...	...	...	...	...	...	...	...	...	...	3	6 6
Vid Karachi and Bombay	...	...	2	5 15	...	...	...	...	...	...	...	...	...	...	...	...	...	...	2	
From East to East—																				
Vid Paumben	...	...	...	...	...	...	...	...	...	...	64	253 14	...	...	...	...	...	...	64	253 14
" Madras	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	65	260 10	65	260 10
" Rangoon	...	...	...	...	1	13 8	56	199 10	...	...	...	...	...	...	4	10 6	...	...	61	223 8
TOTAL	2,952	11,895 8	98	338 8	8	29 7	7,085	19,856 10	...	...	64	253 14	...	...	4	10 6	65	260 10	10,276	32,644 15
GRAND TOTAL																			29,344	95,930 7

ABSTRACT OF FOREIGN TRAFFIC WITH INDIA BY THE INDO-EUROPEAN AND RED SEA ROUTES FOR THE MONTH OF DECEMBER 1882.

ROUTE.		Number of Messages by each Route (exclusive of Transit). To India.	From India.	Total.	Percentage of Number. To India.	From India.	Total.
Indo-European	Vid Teheran	2,055	2,803	4,858	33·12	40·89	37·20
	" Turkey	152	92	244	2·45	1·34	1·87
	Persian Gulf vid Karachi	52	28	80	0·84	0·41	0·61
Red Sea	Vid Suez	3,945	3,932	7,877	63·59	57·36	60·32
	TOTAL	6,204	6,855	13,059	100·00	100·00	100·00

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

IRRIGATION OPERATIONS OF FASL RABI, N.-W. PROVINCES, 1882-83, UP TO 28th FEBRUARY 1883.

Canal Division.	Water distributed during February 1883. Depth in Canal at regulating gauge in feet. Full supply.	Depth in Canal at regulating gauge in feet. Actual average throughout.	Gross Consumption, cubic feet per second. Allotted discharge.	Gross Consumption, cubic feet per second. Actual average throughout.	Total area of irrigation during current fasl.	Total area for the corresponding period of last year.
Upper Ganges. Northern	10·00	6·68	950	—45	43,684	49,257
Upper Ganges. Anúpshahr	7·00	0·82	1,100	69	75,462	66,226
Upper Ganges. Meerut	8·10	5·06	925	568	94,506	91,267
Upper Ganges. Bulandshahr	7·20	5·46	925	52	107,166	99,943
Upper Ganges. Aligarh	5·50	4·65	1,300	469	152,527	136,110
Lower Ganges. Narora	9·00	4·99	975	155	22,009	21,921
Lower Ganges. Mainpuri	7·00	3·7	600	149	59,894	60,941
Lower Ganges. Cawnpore	8·20	4·4	825	334	103,734	106,079
Lower Ganges. Etáwah	5·80	3·1	975	770	135,764	148,689
Lower Ganges. Bhognipur	7·00	5·62	950	403	53,318	44,950
Total, Upper and Lower Ganges Canals	...	...	9,525	2,924	848,064	825,383
Eastern Jumna Canal	4·74	0·10	1,300	16	125,591	135,959
Agra Canal	8·50	6·9	1,300	600	84,870	78,131
Rohilkhand	...	...	...	...	43,750	52,900
Bijnor	...	...	...	...	2,871	2,391
Dún	...	...	...	...	7,768	7,012
Jhánsi	...	...	...	...	486	318
Hamírpur	...	...	...	...	771	90
Total	...	...	...	...	1,114,171	1,102,184

Land irrigated (approximate). Zila.	Wheat.	Barley.	Gram.	Other food-grains.	Miscellaneous.	Total.	Rainfall. Total from 1st October 1882 to 28th February 1883.	Rainfall. Average of ten previous years for the same period.
Saháranpur	42,039	789	953	858	5,719	50,358	3·6	4·1
Muzaffarnagar	77,089	1,617	1,885	5,456	4,613	90,660	3·6	2·8
Meerut	145,674	9,205	3,156	12,509	3,541	174,083	2·5	2·9
Bulandshahr	81,951	23,429	4,018	17,042	2,228	128,659	2·8	2·2
Aligarh	56,819	43,507	953	4,414	4,409	110,102	2·8	1·6
Muttra	8,527	4,936	8,542	6,648	5,647	34,300	2·8	1·5
Agra	10,444	2,492	2,485	8,567	1,388	25,376	1·4	1·1
Etah	35,086	16,116	590	4,832	8,052	64,676	2·3	1·5
Mainpuri	54,166	24,185	461	2,604	9,832	91,248	2·3	1·5
Fatehgarh	27,791	11,430	490	2,649	1,174	43,534	1·4	1·8
Etáwah	56,932	36,986	1,498	508	5,926	101,850	1·9	1·6
Cawnpore	41,654	63,890	2,746	3,217	3,373	114,880	3·9	2·0
Delhi	24	36	23	41	...	124	1·9	2·6
Gurgaon	8,327	4,436	5,682	9,514	716	28,675	·8	2·6
Debra Dún	6,992	147	17	197	415	7,768	5·2	5·0
Bijnor	2,737	30	6	25	73	2,871	2·6	2·9
Tarái	4,125	562	...	563	...	5,250	4·4	2·8
Pilibhit	2,937	625	...	625	...	4,187	4·1	2·9
Bareilly	27,438	3,750	...	3,125	...	34,313	2·3	2·4
Jhánsi	145	...	170	168	3	486	1·4	·9
Hamírpur	...	...	...	229	542	771	1·9	1·1
Total	690,897	248,157	33,675	83,791	57,651	1,114,171	...	..
Total for the same period last year	691,361	242,049	35,505	87,196	46,073	1,102,184	...	...
Increase	...	6,108	...	...	11,578	11,987	...	...
Decrease	464	...	1,830	3,405	...	...	...	...

Note.—Besides the above, 250 acres under sugarcane were irrigated in the Rohilkhand Canals simultaneously with the rabi.

Remarks.

		Cubic feet per second.
Supply—		
Entering head of Ganges Canal		3,818
„ Lower Ganges Canal		1,154
		4,972
Expended—		
Ganges Canal	1,113	
Lower Ganges Canal	1,811	
	2,924	
Escaped—		
Meerut Division	783	
Bulandshahr ditto	234	
Narora ditto	62	
Mainpuri ditto	63	
Cawnpore ditto	431	
Etáwah ditto	155	
Bhognipur ditto	324	
Percolation from Mainpuri Division	6	
	2,048	
	4,972	

Executive Engineer, Meerut Division, reports that the rajbahas were run as escapes for a few days. No new irrigation was effected, all demand having ceased since 25th January, and that the 633 acres new irrigation belong really to an omission from January's estimate.

Executive Engineer, Bulandshahr Division, reports that no irrigation took place during the month, that the increase of 5,627 acres are arrears altered by comparison with the final measurements now going on, and that the wheat area shews a steady increase.

Executive Engineer, Narora Division, reports that the heavy rain of 26th and 27th January, 1883, rendered all new irrigation unnecessary. Unusual freedom from frost in December is the reason that notwithstanding the opening of new distributaries, the total irrigation has somewhat fallen off as compared with last year.

Executive Engineer, Mainpuri Division, reports that there was no demand till about the 20th of the month owing to the rain which fell on 25th January and succeeding days.

Executive Engineer, Cawnpore Division, reports that the heavy rains of the 2 th and 26 h January have practically closed all demand for water for the season for all rabi crops except poppy, and what slight demand there has been during the current month on account of the latter crop has been confined to the Fatehgarh district, where the rainfall was lighter than lower down, the irrigation up to date is approximately the same as that of last year.

Executive Engineer, Etáwah Division, reports that the decrease in area as compared with the corresponding period of last year, viz., 12,925 acres, is chiefly due to a large area of arbar crop having been sown in kharif which otherwise would have been under rabi.

Executive Engineer, Bhognipur Division, reports that there was only a slight demand for water during the latter half of the month, and that very little new irrigation was effected.

Executive Engineer, Eastern Jumna Canal, reports that the decrease from last year is all in wheat that would have taken water in December and January had the supply been sufficient.

Executive Engineer, Agra Canal, reports that no new irrigation was effected during the month, and that measurements are expected to shew about the same area as in the preceding year.

Executive Engineer, Rohilkhand Canal, reports that there was no demand for water during the month except slightly in the Kicha Canal. Owing to the heavy rain at end of January very little canal water was taken for sugar paleo.

Allahabad,
The 22nd March 1883.

W. P. V. HORST,
Offg. Asst. Secy. to Govt., N.-W. P. and Oudh, P. W. D., Irrigation Branch.

STATEMENT OF TRAFFIC ON UPPER AND LOWER GANGES CANALS FOR THE MONTH OF FEBRUARY 1883.

	UPPER GANGES CANAL. Principal items of Local Traffic.						LOWER GANGES CANAL. Principal items of Local Traffic.						UPPER AND LOWER GANGES CANALS. Principal items of Through Traffic.						UPPER AND LOWER GANGES CANALS. Principal items of Local and Through Traffic.						Remarks.
	Up.		Down.		Total up and down.		Up.		Down.		Total up and down.		Up.		Down.		Total up and down.		Up.		Down.		Total up and down.		
Grains.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	Mds.	Nos.	
Wheat	1,751	...	3,566	...	5,317	...	...	...	3,275	...	3,275	...	...	...	8,350	...	8,350	...	1,751	...	15,191	...	16,942	...	
Gram	2,000	...	...	...	2,000	...	325	...	...	...	325	...	...	...	...	...	...	...	2,325	...	...	...	2,325	...	
Rice	...	...	...	...	...	...	250	...	...	...	250	...	408	...	...	...	408	...	658	...	...	...	658	...	
Paddy or dhán	...	...	...	...	...	...	150	...	...	...	150	...	...	...	...	...	...	...	150	...	...	...	150	...	
Bejhar or mixed grain	...	...	...	...	...	...	302	...	...	...	302	...	...	...	...	...	...	...	302	...	...	...	302	...	
Dál ... Urd	250	...	...	...	250	...	...	...	...	...	...	...	...	...	443	...	443	...	250	...	443	...	693	...	
Dál ... Múng	...	...	...	...	...	...	...	...	...	...	...	...	50	...	...	...	50	...	50	...	...	...	50	...	
Dál ... Arhar	753	...	250	...	1,003	...	...	...	...	...	...	...	2,167	...	...	...	2,167	...	2,920	...	250	...	3,170	...	
Dál ... Masúri	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Juár	...	...	...	...	...	...	4,139	...	...	...	4,139	...	451	...	...	...	451	...	4,590	...	...	...	4,590	...	
Bájra	...	...	...	...	...	...	277	...	...	...	277	...	...	...	...	...	...	...	277	...	...	...	277	...	
Maize or Indian-corn	...	...	...	...	...	...	2,250	...	...	...	2,250	...	2,304	...	...	...	2,304	...	4,554	...	...	...	4,554	...	
Barley	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Total	4,754	...	3,816	...	8,570	...	7,693	...	3,275	...	10,968	...	5,380	...	8,793	...	14,173	...	17,827	...	15,884	...	33,711	...	
Cotton	...	...	...	...	...	...	...	...	3,100	...	3,100	...	...	...	7,953	...	7,953	...	...	...	11,053	...	11,053	...	
Oil-seeds	...	...	...	...	...	...	...	...	416	...	416	...	...	...	797	...	797	...	...	...	1,213	...	1,213	...	
Salt	1,322	...	...	...	1,322	...	...	...	494	...	494	...	...	...	15,637	...	15,637	...	1,322	...	16,131	...	17,453	...	
Metals	...	...	21	...	21	...	74	...	...	...	74	...	5,684	...	891	...	6,575	...	5,758	...	912	...	6,670	...	
Building materials	23,502	...	20,900	...	44,402	...	2,885	...	14,200	...	17,085	...	...	...	1,162	...	1,162	...	26,387	...	36,262	...	62,649	...	
Miscellaneous goods	1,182	...	5,253	...	6,435	...	40	...	3,113	...	3,153	...	13,174	...	9,678	...	22,852	...	14,396	...	18,044	...	32,440	...	
Firewood	1,600	...	32,297	...	33,897	...	6,779	...	15,250	...	22,029	...	1,913	...	...	...	1,913	...	10,292	...	47,547	...	57,839	...	
Bamboos	...	...	9,017	180,340	9,017	180,340	...	...	900	18,000	900	18,000	400	8,000	...	...	400	8,000	400	8,000	9,917	198,340	10,317	206,340	
Timber. Poles and unsquared timber.	...	...	2,454	2,454	2,454	2,454	...	...	...	...	...	...	50	50	...	...	50	50	50	5	2,454	2,454	2,504	2,504	
Timber. Karis and squared timber.	...	...	16,532	16,532	16,532	16,532	36	36	...	...	36	36	...	...	4,650	4,650	4,650	4,650	36	36	21,182	21,182	21,218	21,218	
Timber. Logs	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Miscellaneous timber	...	...	27	54	27	54	...	...	...	...	...	...	340	680	...	...	340	680	340	680	27	54	367	734	
Live-stock	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...	
Grand Total	32,360	...	90,317	199,380	122,677	199,380	17,507	36	40,748	18,000	58,255	18,036	26,941	8,730	49,561	4,620	76,502	13,380	76,808	8,766	180,626	222,030	257,434	230,796	
Total during corresponding period of last year.	24,885	5	44,153	253,852	69,033	253,857	25,028	808	30,005	12,778	55,033	13,586	53,081	94	45,753	7	98,834	101	102,930	907	119,911	266,637	222,901	267,544	
Increase	7,479	...	46,164	...	53,643	...	...	...	10,743	5,222	3,222	4,450	...	8,636	3,808	4,643	...	13,289	...	7,859	60,715	...	34,533	...	
Decrease	...	5	...	54,472	...	54,477	7,521	772	...	...	...	...	26,140	...	...	...	22,332	...	26,182	...	...	44,607	...	36,748	

Particulars.	Upper Ganges Canal (local).		Lower Ganges Canal (local).		Upper and Lower Ganges Canals (through).		Total, Upper and Lower Ganges Canals.	
	1882.	1883.	1882.	1883.	1882.	1883.	1882.	1883.
Tonnage, including weight of timber and bamboos	2,536	4,507	2,021	2,140	3,631	2,810	8,188	9,457
Ton mileage	143,338	208,244	214,423	165,557	827,485	566,989	1,187,246	940,790
Value of goods R	38,778	1,30,005	1,40,139	1,63,185	3,14,022	2,89,396	4,92,939	5,82,586
Number of passengers	...	77	74	...	30	6	104	83

Allahabad,
The 7th March 1883.

W. P. V. HÖRST,
Offg. Asst. Secy. to Govt., N.-W. P. & Oudh, P. W. D., Irrigation Branch.

STATEMENT OF TRAFFIC ON THE AGRA CANAL FOR THE MONTH OF FEBRUARY 1883.

AGRA CANAL.

Nature of Traffic.	Principal items of Traffic.						Remarks.
	Up.		Down.		Total up and down.		
	Mds.	No.	Mds.	No.	Mds.	No.	
Grains—							
Wheat	...	...	1,400	...	1,400	...	
Gram	...	...	...	...	...	...	
Rice	...	...	...	...	...	...	
Paddy or dhán	...	...	...	...	...	...	
Bejhar or mixed grain	...	...	...	...	...	...	
Dál—							
Urd	...	...	...	...	...	...	
Múng	...	...	...	...	...	...	
Arhar	40	...	...	...	40	...	
Masúri	...	...	...	...	...	...	
Juár	...	...	800	...	800	...	
Bájra	...	...	...	...	...	...	
Maize or Indian-corn	...	...	...	...	...	...	
Barley	...	...	...	...	...	...	
Total	40	...	2,200	...	2,240	...	
Cotton	...	...	200	...	200	...	
Oil-seeds	...	...	...	...	...	...	
Salt	...	...	...	...	...	...	
Metals	...	...	...	...	...	...	
Building materials	24,755	...	3,200	...	27,955	...	
Miscellaneous goods	2,950	...	11,750	...	14,700	...	
Firewood	...	...	...	...	...	...	
Bamboos	...	...	...	...	...	...	
Timber—							
Poles and unsquared timber	...	...	600	...	600	...	
Karis and squared timber	...	...	...	...	...	...	
Logs	...	...	...	...	...	...	
Miscellaneous timber	...	...	100	...	100	...	
Live-stock	...	...	...	...	...	...	
Grand Total	27,745	...	18,050	...	45,795	...	Grain traffic very slack Miscellaneous down-traffic chiefly gúr. Steady up-traffic in Agra stone.
Total during corresponding period of last year	11,550	...	19,144	...	30,694	...	
Increase	16,195	...	...	...	15,101	...	
Decrease	...	...	1,094	...	...	...	

Particulars.	Agra Canal.	
	1883.	1882.
Tonnage, including weight of timber and bamboos	1,682	1,128
Ton mileage	187,733	121,790
Value of goods R	59,420	63,376
Number of passengers	...	...

Allahabad,
The 9th March 1883.

W. P. V. HORST,
Offg. Asst. Secy. to Govt., N.-W. P. and Oudh, P. W. D., Irrigation Branch.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

STATEMENTS OF IRRIGATION OPERATIONS OF THE KHARIF CROP OF 1882-83, PUNJAB.

STATEMENT No. I.

Comparative Abstract of Irrigation and Rainfall in Canal Districts of the Punjab.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
DISTRICTS.	Area in acres.	Cultivated area in acres.	AREA IRRIGATED.		COMPARISON WITH LAST CROP.		RAINFALL IN KHARIF MONTHS.													
							April.		May.		June.		July.		August.		September.		TOTAL.	
			1881-82.	1882-83.	Increase.	Decrease.	1881-82.	1882-83.	1881-82.	1882-83.	1881-82.	1882-83.	1881-82.	1882-83.	1881-82.	1882-83.	1881-82.	1882-83.	1881-82.	1882-83.
Umballa	1,644,849	951,890	2,287	2,798	511	...	0·40	0·15	1·52	0·30	3·35	6·00	8·17	17·96	11·30	13·09	3·03	2·70	27·79	40·14
Karnál	1,533,990	680,319	36,367	39,095	2,728	...	0·21	1·57	0·78	0·64	3·74	2·57	8·26	6·91	7·57	2·76	...	4·95	20·56	19·40
Rohtak	1,159,350	906,022	32,626	35,528	2,902	...	0·15	...	...	0·20	3·10	2·20	10·70	5·60	5·70	2·80	...	2·20	19·65	12·80
Delhi	804,933	525,676	28,964	34,300	5,336	...	0·20	...	0·10	0·40	2·20	2·30	11·50	12·20	3·80	3·50	0·60	5·50	23·40	23·90
Hissár	2,265,428	1,161,761	38,963	33,919	...	5,044	1·20	0·10	...	...	0·40	0·30	7·50	12·20	5·80	0·50	...	2·10	14·90	15·20
Jind	...	...	28,273	26,885	...	1,388	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Bíkaner	...	...	241	224	...	17	...	...	...	...	...	...	...	...	...	...	...	...	...	...
TOTAL W. J. CANAL	7,408,550	4,225,668	167,721	172,749	11,477	6,449	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Gurdáspur	1,168,314	856,230	17,069	18,619	1,550	...	0·48	0·40	0·95	...	7·63	0·61	19·26	8·20	15·33	6·05	1·60	5·80	45·25	21·06
Amritsar	1,006,798	766,773	41,769	52,525	10,756	...	0·20	0·80	1·90	0·40	13·20	0·90	23·60	13·00	25·30	10·80	4·90	11·30	69·10	37·20
Lahore	2,334,552	1,164,921	68,035	75,326	7,291	...	1·10	1 20	0·95	0·20	0·60	0·60	12·20	17·20	6·35	8·60	...	10·50	21·20	38·30
TOTAL B. D. CANAL	4,509,664	2,787,924	126,873	146,470	19,597	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lahore	Given	above.	*18,830	11,822	...	7,008	1·10	...	0·45	0·40	1·01	0·09	7·77	9·30	3·68	3·04	0·41	3·90	†14·42	21·73
Montgomery	3,567,750	357,622	62,352	35,003	...	27,349	...	...	...	...	0·60	0·50	10·20	5·10	2·90	1·40	...	5·00	†13·70	12·00
Mooltán	3,763,200	799,360	199,773	‡206,726	6,953	...	...	...	...	...	...	0·2	1·50	6·8	1·50	0·8	...	...	2·50	7·8
Dera Gházi Khan	2,801,280	1,008,000	139,594	‡151,799	12,205	...	0·50	0·7	0·90	...	...	0·9	2·15	9·35	3·20	0·20	...	0·6	6·45	11·75
Shahpur	3,002,432	524,988	7,138	7,826	688	...	1·00	0·9	0·20	0·5	4·40	...	3·70	10·5	2·40	1·6	1·10	9 0	12 80	22·5
Muzaffargarh	2,007,819	397,529	134,350	‡137,000	2,650	...	0·2	0·05	...	...	...	...	0·8	5·35	2·0	0·5	...	1·5	†3·0	7·4
TOTAL INUNDATION CANALS	15,142,481	3,087,499	562,037	550,176	22,496	34,357	...	...	...	...	...	...	...	...	...	...	...	...	...	...
GRAND TOTAL	§27,060,695	§10,101,091	856,631	869,395	53,570	40,806	...	...	...	...	...	...	...	...	...	...	...	...	...	...

	Acres.
Area irrigated in kharif 1881-82	856,631
Ditto ditto 1882-83	869,395
Net Increase	12,764

* Includes 12 acres supplementary irrigation not included in the returns for kharif crop of 1881-82.
† These figures represent the correct rain-fall during kharif, 1881-82, and differ from those shown in the returns for that crop submitted last year.
‡ These figures are approximate, as the Superintending Engineer reports that the whole of the measurement papers had not been received by Executive Engineers.
§ These figures differ from those shown in the returns for kharif 1881-82, in consequence of the omission of Gurgaon from this return, in which district no irrigation is shown.

STATEMENT No. II.

Statement in Acres of Crops irrigated in Canal Districts.

DESCRIPTION OF CROPS.	Umballa.	Karnál.	Rohtak.	Delhi.	Gurgáon.	Hissár.	Jind.	Bikaner.	Gurdáspur.	Amritsar.	Lahore.	Montgomery.	Mooltan.	Dera Ghazi Khan.	Shahpur.	Muzaffargarh	TOTAL.
Sugarcane	409	8,958	16,526	18,088	...	428	2,773	...	4,612	4,796	2,840	96	3,308	56	86	6,000	68,976
Rice	2,150	18,071	3,448	7,539	...	6,183	7,569	...	10,304	20,629	10,411	5,288	14,283	27,232	9	35,000	168,146
Cotton	4	8,331	11,108	3,649	...	20,439	9,606	42	883	9,350	24,428	5,996	30,959	38,302	4,361	25,000	192,458
Indigo	...	...	...	...	...	...	...	...	1	...	...	...	79,259	26,614	...	35,000	140,874
Others	235	3,735	4,446	5,024	...	6,869	6,937	182	2,819	17,750	49,469	23,623	78,917	59,565	3,370	36,000	298,941
TOTAL KHARIF, 1882-83	2,798	39,095	35,528	34,300	...	33,919	26,885	234	18,619	52,525	87,148	35,003	206,726	151,799	7,826	137,000	869,395
TOTAL KHARIF, 1881-82	2,287	36,367	32,626	28,964	...	38,963	28,273	241	17,069	41,769	*86,865	62,352	199,773	139,594	7,138	134,350	856,631

* Includes 12 acres supplementary irrigation not included in the returns for kharif crop, 1881-82.

STATEMENT No. III.

Statement in Acres of Crops irrigated in Canal Divisions.

DESCRIPTION OF CROPS.	WESTERN JUMNA CANAL.				BARI DOAB CANAL.			Upper Sutlej Division Inundation Canals.	Lower Sutlej and Chenab Division Inundation Canals.	Dera Ghazi Khan Division Indus Canals.	Shahpur Canals.	Muzaffargarh Canals Division.	TOTAL.
	Karnal Division.	Hansi Division.	Delhi Division.	TOTAL.	1st Division.	2nd Division.	TOTAL.						
Sugarcane	1,331	7,962	37,889	47,182	5,348	6,893	12,241	103	3,308	56	86	6,000	68,976
Rice	9,916	17,256	17,788	44,960	11,382	28,549	39,931	6,701	14,283	27,262	9	35,000	168,146
Cotton	1,446	38,549	13,184	53,179	5,961	27,391	33,352	7,305	30,959	38,302	4,361	25,000	192,458
Indigo	...	...	...	...	1	...	1	...	79,259	26,614	...	35,000	140,874
Others	2,181	16,577	8,670	27,428	11,249	49,696	60,945	32,716	78,917	59 565	3,370	36,000	298,941
TOTAL KHARIF, 1882-83	14,874	80,344	77,531	172,749	33,941	112,529	146,470	46,825	206,726	151,799	7,826	137,000	869,395
TOTAL KHARIF, 1881-82	13,641	85,927	68,153	167,721	31,790	95,083	126,873	*81,182	199,773	139,594	7,138	134,350	856,631

* Includes 12 acres supplementary irrigation not included in the returns for kharif of 1881-82.

R. HOME, *Colonel, R.E.,*
Joint-Secretary to Govt., Punjab, P. W. D., Irrigation Branch.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

IRRIGATION BRANCH.

IRRIGATION OPERATIONS IN BENGAL FOR 1882-83.

Areas leased for irrigation up to the end of November 1882.

Circle.	District.	Canal.	Estimated full discharge.	Average discharge during month.	Discharge utilized.	Approximate area of land under irrigation during month.	Approximate area of land under irrigation last year at same time.	DETAILS OF AREAS LEASED.								Rainfall, 1882-83.		Rainfall, 1881-82.		Remarks.
								Five years. All crops.	Five years. Khurreef	Annual Leases.					Grand Total.	During month.	Up to end of month.	During month.	Up to end of month.	
										Khurreef.	Rubbee.	Sugarcane.	Bhadoi.	Hot weather.	Total.					
			C. ft.	C. ft.	C. ft.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	Acr.	In.	In.	In.	In.	
Orissa	Cuttack	Kendrapara	1,269	340·5	14·12	3	43	...	53,688	...	...	70	...	...	70	53,758	2·62	85·04	0·44	58·15	The khurreef leases for five years expired on the 30th November 1882. The rubbee area shewn in previous statements was irrigated in the rubbee season of 1881-82, *i. e.*, between 1st December 1881 and 31st May 1882; but assessed during the current year 1882-83. The area thus assessed to end of November is 4,093 acres and is shewn in the column "Total of the corresponding month of last year."
		Gobri	372·82	132·77	60·77	3,711	4,096									12,068					
		Pattomoondee	1,042	92·75	75·31	12,106	13,654	...	12,068	...	...	...	...	...	...						
		High Level, Section I.	675	215·33	215·33	15,294	14,327	...	14,213	...	...	8	...	...	8	14,221					
		Taldunda, 1st Reach.	1,300	271	..	9,954	9,954	...	11,008	...	...	36	...	...	36	11,044					
		Taldunda, 2nd Reach.	650	24	24																
		Matchgong	650	31	31	23,209	26,261	...	31,466	...	...	77	...	...	77	31,543					
	Balasore	High Level, Section II.	727·16	187·72	187·72	265	74	...	1,380	...	...	190	...	...	190	1,570					
		High Level, Section III.	727·16	...	...	62	796														
		Total	...	...	...	64,604	69,205	...	123,823	...	...	381	...	...	381	124,204	...	...	...	...	
	Total of the corresponding period of last year.		...	...	...	...	...	...	118,030	...	4,093	268	...	...	4,361	122,391	...	...	...	...	
South Western	Midnapore	Midnapore	1,411	284	136	84,947	90,495	...	84,653	...	...	...	...	...	...	84,653	0·62	61·26	...	68·53	
	Howrah	Panchcoorah	622	21	3	10,527	13,367	...	12,857	...	...	...	...	...	...	12,857	0·47	47·31	...	77·47	
	Total		...	...	...	95,495	103,862	...	97,510	...	...	...	...	...	...	97,510	...	...	...	...	
	Total of the corresponding period of last year.		...	...	...	...	...	...	103,862	...	...	...	...	...	...	103,862	...	...	...	...	
Sone	Shahabad	Western Main	4,342	1,470	1,470	66	3,625	2,756	...	2,269	1,229	1,217	11	...	5,726	8,482	1·28	26·52	...	39·93	
		Buxar	1,226	372		7,990	17,956	6,766	...	15,688	5,189	3,207	45	...	23,529	30,295					
		Arrah	1,660	733		23,527	12,675	48,890	...	21,819	1,697	4,531	35	...	28,082	76,972	1·45	35·21	...	45·95	
	Patna and Gya.	Eastern Main	1,466	410	410	546	166	214	...	276	...	35	...	...	311	525	1·23	35·02	...	42·14	
		Patna				27,186	17,406	9,136	...	9,777	517	834	...	1,489	12,617	21,753					
		Total	...	...	...	59,285	51,728	67,762	...	50,229	8,632	9,824	91	1,489	70,265	138,027	...	...	...	...	
	Total of the corresponding period of last year.		...	...	...	...	...	(a) 33,930	(b) 6,986	36,930	...	4,017	...	...	50,947	91,863	...	...	...	...	(a) Shewn in return for November 1881 under khurreef. (b) Leases for three years.
	Grand Total		...	...	...	219,384	224,795	67,762	221,333	50,229	8,632	10,205	91	1,489	70,646	359,741	...	...	...	...	
	Grand Total of the corresponding period of last year.		...	...	...	...	...	33,930	228,878	36,930	4,093	14,285	...	...	55,308	318,116	...	...	...	...	

The 22nd March 1883.

C. W. ODLING,
Under-Secy. to the Govt. of Bengal, in the P. W. Dept.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

IRRIGATION BRANCH.

IRRIGATION OPERATIONS IN BENGAL FOR THE OFFICIAL YEAR 1882-83.

Areas leased for Irrigation up to the end of December 1882.

Circle.	District.	Canal.	Estimated full discharge.	Average discharge during month.	Discharge utilized.	Approximate area of land under irrigation during month.	Approximate area of land under irrigation last year at same time.	DETAILS OF AREAS LEASED.									Rainfall 1882-83.		Rainfall 1881-82.		Remarks.
								Five years. All crops.	Five years. Khurreef.	Annual leases. Khurreef.	Rubbee.	Sugarcane.	Bhadoi.	Hot weather.	Total.	Grand Total.	During month.	Up to end of month.	During month.	Up to end of month.	
			C. ft.	C. ft.	C. ft.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Acres.	Inches.	Inches.	Inches.	Inches.	
Orissa	Cuttack	Kendrapara	1,369	300·50	...	3,968	4,835	...	53,688	...	...	71	...	...	71	53,759	...	85·04	...	58·15	
		Gobri	372·82	135·71	59·84																
		Pattamoondee	1,042	50·90	6·61	12,106	13,809	...	12,068	...	...	...	...	...	...	12,068					
		High Level, Section I	675	161·25	161·25	...	12	...	14,213	...	...	8	...	...	8	14,221					
		Taldunda, 1st Reach	1,300	90	...	24	67	...	11,008	...	...	...	...	...	...	11,008					
		Ditto, 2nd do.	650	51	51																
		Matchgong	650	...	...	...	...	...	31,466	...	...	...	...	...	...	31,466					
	Balasore	High Level, Section II	727·16	207·99	207·99	...	6	...	1,380	...	...	191	...	...	191	1,571					
		Ditto, do. III	727·16	...	...	...	17	...													
		Total	...	...	...	16,098	18,746	...	123,823	...	...	270	...	...	270	124,093	...	...	...	...	
		Total of the corresponding period of last year.	...	...	...	...	...	...	118,113	...	4,093	268	...	...	4,361	122,474	...	...	...	...	
South-Western.	Midnapore	Midnapore	1,411	35	...	...	...	...	85,893	...	...	...	...	...	...	85,893	...	61·26	0·24	68·77	
	Howrah	Panchkoorah	522	16	...	...	...	...	12,857	...	...	...	...	...	...	12,857	...	47·31	0·58	78·05	
		Total	...	...	...	...	...	...	98,750	...	...	...	...	...	...	98,750	...	...	...	...	
		Total of the corresponding period of last year.	...	...	...	...	...	...	103,862	...	...	...	...	...	...	103,862	...	...	...	...	
Sone.	Shahabad	Western Main	4,342	935	935	671	1,337	2,756	...	3,269	1,317	1,217	11	...	5,824	8,580	...	26·52	...	39·93	
		Buxar	1,226	263		1,378	2,128	7,445	...	15,088	5,402	3,207	45	...	23,742	31,187					
		Arrah	1,660	294		26,550	21,570	49,254	...	21,819	4,512	4,531	35	...	30,897	80,151	...	35·21	...	45·95	
	Patna and Gya	Eastern Main	1,466	207	207	556	166	214	...	276	6	35	...	...	317	531	...	35·02	...	42·14	
		Patna				28,470	20,849	10,418	...	9,777	1,091	834	...	1,489	13,191	23,609					
		Total	...	...	...	57,625	46,050	70,087	...	50,229	12,338	9,824	91	1,489	73,971	144,058	...	...	...	...	(a) Shown in return for December 1881 as khurreef.
		Total of the corresponding period of last year.	...	...	...	...	...	(a)38,673	(b)6,986	36,930	(c)15,267	14,048	...	...	66,245	111,904	...	...	...	...	(b) Leases for three years.
		Grand Total	...	...	...	73,723	64,796	70,087	222,573	50,229	12,338	10,094	91	1,489	74,241	366,901	...	...	...	...	(c) Includes 3,347 acres rubbee leased for three years.
		Grand total of the corresponding period of last year.	...	...	...	...	...	38,673	228,961	36,930	19,360	14,316	...	...	70,606	338,240	...	...	...	...	

The 22nd March 1883.

C. W. ODLING,
Under-Secy. to the Govt. of Bengal,
P. W. Department.

GOVERNMENT OF INDIA.

REVENUE AND AGRICULTURAL DEPARTMENT.

REPORTS ON THE STATE OF THE SEASON AND PROSPECTS OF THE CROPS FOR THE WEEK ENDING THE 17th APRIL 1883.

GENERAL REMARKS.—With the exception of slight showers in two districts of the Punjab and the North-Western Provinces and in four districts of Bengal, there has been no rain in Northern India nor in the Central India States. In the Bombay and Madras Presidencies there has been some rain in a few places, and a slight fall is also reported from two districts of Rajputana and from Mysore. In Assam the rainfall has been more or less general throughout the province.

In the Madras Presidency standing crops are generally good; cotton, sugarcane, and dry grains are still being harvested and a fair yield is expected. In the Bombay Presidency land is being prepared for *kharif* sowings in parts, and planting of sugarcane still continues in one or two places. In Bengal the *rabi* harvest is almost over, and has yielded a fair crop; tea prospects are reported as backward owing to drought, and rain is wanted in Bengal proper for *boro* paddy, indigo, and other crops on the ground. In the North-Western Provinces the *rabi* harvest is almost completed, and the outturn is stated to be satisfactory; the new grain is coming into the markets and the price of barley has fallen. In the Punjab the *rabi* harvest is either commencing or in progress, and generally with good prospects. Prospects are also good in the Central Provinces, where the harvest is practically over, and the grain is being prepared for the markets. In Assam ploughing for *ahu* still continues. In Mysore and Coorg standing crops are in good condition, and in the Nizam's territories preparations of *kharif* sowings are in progress. In Rajputana and the Central India States the prospects of the crops are good.

Presidency or Province and District.	Rainfall for week preceding.	State of agricultural prospects.
Madras—(April 18th)		
Bellary ...	·22 (average of three stations).	Standing crops generally good; harvest sugarcane, wheat, and cotton, outturn average.
Kurnool ...	.....	Standing crops in good condition; harvest cotton, yield between 6 and 12 annas; small-pox and cattle-disease in parts, latter more general.
Ganjam ...	·6 (one station)	Standing crops cotton and *ragi* thriving; fever, small-pox, and cattle-disease continue.
Kistna ...	.....	Standing crops generally good, but castor, cotton, and paddy diseased in parts; harvest Bengal gram, later maize, *cumboo*, *cholum*, cotton, paddy, &c., outturn one-eighth to three-quarters; small-pox and cattle-disease in parts.
Chingleput (Madras) ...	.....	Standing crops in good condition; harvest paddy, outturn half; small-pox and measles prevail; cholera abating; cattle-disease in parts.
Coimbatore ...	.....	Standing crops, except cotton in parts of one taluk, require rain; harvest paddy, outturn average in one and above average in three taluks; cholera, fever, and cattle-disease continue; fever more general.
Tanjore ...	.....	Standing crops in good condition; harvest paddy, *cholum*, *ragi*, ground-nut, gingelly seed, *volagu*, black gram and horse gram, outturn below average; cholera continues.
Madura ...	·9 (one station)	Standing crops failing in parts; harvest paddy; fever and cholera continue in parts.
Malabar ...	9·3 (average of eleven stations).	Third crop paddy progressing in parts; cholera in one taluk and small-pox in all.
Travancore ...	.....	Cultivation in progress; fever continues.
		General Remarks.—No rain except in Ganjam, Bellary, Madura, and Malabar; general prospects good.
Bombay—(April 18th)		
Karachi ...	.....	River at Kotri on 16th, 3 feet 8 inches against 8 feet 4 inches on same date last year; *rabi* harvesting continues; fever in seven talukas; cattle-disease in two talukas; small-pox prevalent in the following localities in Karachi—Bagdadi lines, old town Machi Miani, Rambagh, and Dadu Bazaar quarters, 15 fresh cases, 3 deaths from 10th to 14th instant, total to latter date 469 cases, 115 deaths, remaining sick 85; also 39 cases, 5 deaths in 8 villages in districts; wheat, red rice, and *bajri* in Karachi 24, 32 and 34, in Kotri 30, 32 and 50, in Ghorabari 20, 44 and 44, and in Shahbandar 22, 44 and 44 lbs. per rupee respectively.
Hyderabad ...	.....	*Rabi* harvesting nearly completed; weather continues unseasonably sultry; small-pox in seven, fever in four, and cattle-disease in five talukas; wheat 24, *bajri* 38, *juari* 48, red rice 28, and white rice 22 lbs. per rupee.
Ahmedabad ...	.....	Planting of sugarcane and sowing of maize progressing; cattle-disease and cholera in Sanand; wheat 27½ and *bajri* 31 lbs. per rupee.
Baroda ...	.....	Harvesting of *rabi* nearly completed; small-pox continues in Naosari and Baroda; *bajri* 31¼ and common rice 24½ lbs. per rupee.

Presidency or Province and District.	Rainfall for week preceding.	State of agricultural prospects.
Bombay—*contd.*		
Surat ...	.....	Preparations of *kharif* continue; small-pox in Balsar, Pardi, and Surat, daily average deaths 4; *juari* 42 and *nagli* 52 lbs. per rupee.
Násik ...	.....	Weather very warm, thermometer 97°; cholera continues, deaths in Násik 20 and taluka 32, it has appeared in Sinnar and Igatpuri talukas, 2 and 4 fatal cases respectively; wheat 28½, *bajri* 33¼, and rice 25 lbs. per rupee.
Colaba (Bombay) ...	.....	Average abnormal temperature 1° warm from 11th to 16th, and 4° warm on 17th; vapour in air in excess of normal from 11th to 15th, afterwards in defect of normal; abnormal wind southerly from 11th to 16th, and northerly on 17th; distant lightning on the morning of 13th.
Poona ...	Duststorm and slight shower on 14th.	*Bajri* 42 and *juari* 54 lbs. per rupee, in Poona *bajri* 37 and *juari* 48 lbs. per rupee.
Ahmednagar ...	·03 in Nagar	Threshing of *rabi* crops in progress; cattle-disease in Nagar, Parner, and Karjat talukas; 4 deaths from cholera in taluka Parner; *juari*—maximum 72 lbs. per rupee in Parner, minimum 51 lbs. in Akola; *bajri*—maximum 54 lbs. in Shrigonda, minimum 42 lbs. in Kopergaon.
Sholapur ...	.....	Cattle-disease in Sholapur town and in three villages in Karmala taluka; *juari* 66 lbs. 9 tolas and *bajri* 55 lbs. 34 tolas per rupee.
Dharwar ...	.....	Harvesting of late crops and cotton picking in progress; scarcity of drinking-water in nine villages of Nargund; locusts in Dharwar; small-pox in one taluka; fever in two talukas; rice minimum 30 and *juari* 45 lbs. per rupee.
Kanara ...	.....	Second crop harvest continues; planting sugarcane; preparing ground for monsoon crop; small-pox in three talukas and one petta; cattle-disease subsiding; fever in two talukas; common rice in Karwar 12½ seers per rupee, in district average 15 seers per rupee; weather warm and cloudy.
Rajkot ...	.....	General health good; weather seasonable in Rajkot; measles in Rajkot town; cholera continues in Katda Nayani, Und, and Lodhika thanas; *bajri* 29 and *juari* 36 lbs. per rupee.
		General Remarks.—Heavy rain in Athni taluka of Belgaum district, slight in three other talukas of that district and in Nagar, Poona, and Jacobabad; locusts in Ratnagiri, Belgaum, Dharwar, and Satara; scarcity of drinking-water continues in portions of Nargund taluka of Dharwar; fever, small-pox, and cattle-disease still in a few districts.
Bengal—**(April 18th)**		
Chittagong ...	*Nil*	Weather dry and hot; prospects of crops generally good, but rain much wanted; prices steady; general health good; cattle-disease abating.
Dacca ...	*Nil*	Weather hot and dry; harvesting of pulses, safflower, and mustard continues; prospects of standing crops not good for want of rain; *sessamum*, early rice, and jute being sown.
24-Pergunnahs (Calcutta)	.....	No crops on the ground; low lands being prepared for *amun* paddy; public health on the whole good.
Moorshedabad ...	*Nil*	*Boro* rice doing well; fields being prepared for *bhadoi* crop; cutting of winter crops finished; public health on the whole good; cases of small-pox and cholera reported from some places.
Rajshahye ...	*Nil*	Weather hot, and no sign of rain; rain much wanted for *boro* rice and for sowing of *aus* rice; cholera reported, but not increasing.
Burdwan ...	*Nil*	Weather hot and dry; rain wanted; cholera abated.
Rungpore ...	·26	Weather hot; prospects of crops good; more rain wanted; sowing of *aus* paddy still going on; public health good.
Bhagálpur ...	*Nil*	Prospects good; fields being ploughed for paddy, which is now being sown on low lands; prices rising slightly; general health good; small-pox decreasing.
Purneah ...	*Nil*	Early crops sown, but threatened with loss for want of rain; public health good.
Patna ...	*Nil*	Harvesting of *rabi* crops about to be completed; public health good.
Durbhunga ...	*Nil*	*Rabi* harvest good; prices stationary; public health generally good.
Hazáribágh ...	*Nil*	Weather hot; no crops on the ground; mango promises well; cattle-disease reported; general health good.
Cuttack ...	*Nil*	Weather hot and cloudy; ploughing in progress; *dálua* rice and wheat being harvested; sugarcane being planted; public health generally good.
		General Remarks.—Slight rain fell in Rungpore, Darjeeling, Jalpaiguri, and Cooch Behar on the 13th, and did some good; want of rain felt throughout Bengal proper, especially for cultivation of autumn crops in Darjeeling; tea prospects backward, owing to drought; *boro* paddy, indigo, and other crops on the ground are also in want of rain in some places; *rabi* harvest almost over, and has yielded a fair crop on the whole in Chota Nagpore and Sonthal Pergunnahs; *mohwa* cutturn generally good; sporadic cases of cholera reported from several places, and of small-pox from some in Nuddea; fever and cholera again increasing, and in Chittagong hill tracts fever prevalent.

Presidency or Province and District.	Rainfall for week preceding.	State of agricultural prospects.
N. W. Provinces and Oudh—		
Benares (April 17th)	No rain	A few isolated cases of cholera in the city and environs; crops good, except mustard; sugarcane planting going on.
Allahabad („ 18th)	.....	Settled hot weather; slight small-pox as before; prices steady; fall in *bajri*.
Gorakhpur („ 16th)	.....	Weather fine; harvest nearly completed, outturn generally good; some small-pox prevalent; prices falling.
Jhánsi („ „)	.....	Weather seasonable; winnowing and threshing of crops in progress; supplies sufficient; prices stationary; small-pox still prevalent.
Agra („ 17th)	No rain	*Rabi* harvest continues; small-pox in five and fever in two parganas; general health good; prices stationary.
Bareilly („ „)	No rain	Harvest approaching completion; prices tending to fall; health of people and cattle continues good.
Meerut („ „)	No rain	Heat increasing, strong westerly wind, duststorm on 14th, no hail; health good; harvest in full progress; new barley in the market, price fallen to 35 seers; wheat stationary.
Kumaun („ „)	No rain	Wheat crop somewhat injured; general health good; cattle-disease continues; prices rising.
Lucknow („ „)	No rain	Strong hot west wind; *rabi* outturn satisfactory; on the whole general health good.
Partabgarh („ „)	.....	Prices have undergone but slight alterations; harvest over; sugarcane being planted out; general health good.
Sitapur („ „)	.....	All the crops are nearly cut, except in *tarai* lands; prices fluctuating; small-pox in three tahsils.
Fyzabad („ „)	No rain	Harvesting going on; prospects good; public health good; prices stationary.
Rae Bareli („ 16th)	.....	Weather seasonable; *rabi* harvesting continues; small-pox and fever still lingering; supplies abundant; prices stationary.
Cawnpore („ 17th)	No rain	Small-pox in town and in two parganas; *rabi* nearly harvested; extra crops, sugarcane, and indigo being sown; markets well supplied with food-grain; prices stationary.
Farukhabad („ „)	.....	Weather seasonable; prices steady; small-pox still prevalent in mild form; cattle-disease reported from three tahsils; crops nearly all cut.
		General Remarks.—Slight showers of rain fell in Aligarh and Saharanpur; small-pox is somewhat more prevalent, and a few cases of cholera are reported from Benares; cattle-disease has appeared in three tahsils in Farukhabad, and fever in parts of Rae Bareli, Aligarh, and Agra; except in Kumaun where there is a rise, prices are stationary, but the general prospects and public health are good.
Punjab—(April 17th)		
Delhi ...	.....	Health fair; small-pox continues; reaping in progress, average yield expected; prices fluctuating.
Hissar ...	.....	Health good; harvesting in progress; prices almost stationary.
Umballa ...	.....	Health good; harvest expected to be below the average; prices stationary.
Jullundur ...	.....	Health good; harvesting commenced; prices stationary.
Lahore ...	Slight rain	Health and harvest prospects good; slight rise in prices.
Amritsar ...	.....	Health and harvest prospects good; prices steady.
Ferozepore ...	.....	Health good; harvesting commenced; prices fluctuating.
Sialkot ...	.....	Health and condition of crops good; prices stationary.
Rawalpindi ...	.....	Fever in Kahuta and Fatthjang continues; a few cases of disease among sheep and goats in Pindi Gheb and Murree; prices steady.
Peshawar ...	.....	Health good; harvest commenced; prices fluctuating.
Mooltan ...	.....	Health and crop prospects good; prices steady.
Dera Ismail Khan ...	·2	Health good; crop prospects fair; prices almost stationary.
		General Remarks.—There has been slight rain in the Lahore and Dera Ismail Khan districts; health and harvest prospects generally good; harvesting has commenced in most districts.
Central Provinces—		
Nagpur (April 18th)	.....	Weather hot and cloudy; harvesting almost completed; small-pox and cattle-disease in places; prices steady.
Jubbulpore ...	.....	Weather getting warmer; threshing and winnowing in progress; prospects and health good; prices stationary.
Saugor ...	.....	No report received.
Seoni ...	.....	Weather cloudy and hot, with occasional duststorms; threshing and winnowing progressing; health good; prices of wheat fallen; rice risen.
Hoshangabad (Apl. 17th)	.....	Weather seasonable, with high winds; winnowing in progress; 19 cases of small-pox, 4 deaths; prices stationary.
Raipur („ 14th)	.....	Weather very warm; all crops gathered in; small-pox in Ding tahsil; prices falling.
Sambalpur („ 12th)	.....	Weather hot; sugarcane coming on well; fever and ague prevail; prices stationary.
Khandwa ...	.....	Weather hot; prospects good; 219 cases small-pox, 29 deaths; prices steady.
		General Remarks.—Weather hot; crop prospects good; small-pox slightly prevalent; fever in Sambalpur; prices steady.
British Burma—(April 14th)—		
Akyab ...	*Nil*	Total rainfall 1·35 inches; 54 cases of cholera in town, of which 22 fatal; 7 deaths from cholera and 7 from small-pox in district, cattle-disease in one township.

Presidency or Province and District.	Rainfall for week preceding.	State of agricultural prospects.
British Burma—*contd.*		
Rangoon ...	*Nil*	Total rainfall 4·53 inches; 6 deaths from small-pox, otherwise public health good.
Bassein ...	.....	Public health good in town; 38 deaths from cholera in district; cattle-disease in three townships.
Prome ...	.....	Public health good.
Amherst (Moulmein) ...	1·65	Total rainfall 2·69 inches; public health in Moulmein and district good; 272 deaths of cattle in three townships.
Toungoo ...	1·28	Total rainfall 2·26 inches; 3 deaths from small-pox in town, otherwise public health good.
		General Remarks.—Cholera prevalent in Akyab town and slightly in part of Kyoukphyoo, Thonegwa, and Bassein, and more small-pox in Akyab, Kyoukphyoo, Rangoon, and Toungoo, otherwise public health good; cattle-disease considerable in Amherst, slight in Akyab, Pegu, Bassein, and Henzada; weather hot, but seasonable.
Assam—		
Gauhati (April 17th)	1·32	Weather getting warm; cattle-disease reported from subdivision; no cholera during the week; weather favourable for *ahu* crop.
Sylhet („ 18th)	·22	Rain wanted now for *boro* paddy and to help ploughing; cholera, small-pox, and cattle-disease reported.
Cachar („ „)	*Nil*	Weather very hot; public health still indifferent; many cases of small-pox and cholera, but not fatal; no cattle-disease reported; common rice 22¾ seers per rupee; rain is very much wanted for ploughing and for tea.
Dibrugarh („ „)	Occasional showers; 3·33.	Ploughing for *ahu*; cholera in North Lakhimpur and neighbourhood of Dibrugarh; small-pox abating.
Mysore and Coorg—(April 18th)		
Bangalore ...	.....	Standing crops in good condition; prospects favourable.
Mysore ...	·11 at Tumkur	Standing crops in good condition; prospects favourable.
Mercara ...	·48	More rain much needed in North Coorg for coffee blossom; the *vysakh* rice crop has come into ear in the Surlabinad; price of food-grains stationary; small-pox prevalent in the Naujarajapatna taluk and fever in Mercara taluk.
		General Remarks.—General health and prospects good; no material change in prices.
Berar & Hyderabad—(April 18th)		
Amráoti ...	.....	Weather hot; ploughing operations in progress; wheat 16 and *juari* 26 seers per rupee.
Akola ...	.....	Weather rather hot; preparations for *kharif* sowings are going on.
Hyderabad ...	.....	No report received.
Central India States—(April 18th)		
Indore ...	.....	Weather seasonable; health good.
Morar (Gwalior) ...	.....	Weather warm; health good.
Sutna ...	.....	Weather hot; health good.
Rutlam ...	.....	No report received.
Neemuch ...	.....	Weather seasonable; public health good.
Goona ...	.....	Weather warm; small-pox still continues; wheat 24 seers per rupee.
Bhopal ...	.....	Weather seasonable; health and prospects good.
Agar ...	.....	Weather seasonable; public health good; opium has been collected.
Nowgong ...	.....	Weather cloudy and hot; public health good.
Manpur ...	.....	Weather hot; prospects good.
Rajputana—		
Abu (April 18th)	.....	Weather warm and seasonable.
Sirohi („ 15th)	.....	Weather seasonable, heat not excessive; wells full; health good; small-pox in some villages; crop prospects good.
Marwar („ 13th)	.....	Tanks all empty; water obtained from wells with difficulty; health good, though small-pox and other abnormal sickness prevail to some extent; crops being cut; weather partially cloudy, heat intense; hot winds commenced; prices stationary.
Meywar („ „)	.....	Tanks and wells fair; health good; crops harvested; weather cloudy.
Harowti („ 14th)	.....	Days hot, nights cold; prices steady; health good.
Jhallawar („ 11th)	.....	Hot and sultry; health good.
Ajmere („ 17th)	.....	Harvest progressing satisfactorily; weather seasonable.
Jeypore („ „)	Drops	Full average harvest expected; wheat selling at 15½ and barley at 19 seers per rupee; health good.
Bhurtpore ...	.....	No report received.
Ulwur (April 17th)	Slight rain	Harvest continues; health good; wheat 20, barley 27½, *bajri* 25, *juari* 28½, and gram 28¼ seers per rupee.
Nepal—(April 12th)		
Katmandu ...	*Nil*	Prospects good; weather sultry.

E. C. BUCK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House, Simla, on Thursday, the 19th April, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.

His Excellency the Commander-in-Chief, G.C.B., C.I.E.

Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.

Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.

The Hon'ble C. P. Ilbert, C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble J. W. Quinton.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING moved for leave to introduce a Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*an Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*). He said:—

"Article 12, Schedule I, of the Court-fees Act, VII of 1870, provides, among other matters, for the levy of a fee of two per cent. on the amount or value of the property in respect of which a certificate is granted under Act XXVII of 1860. The following note is appended to the article:—

'The person to whom any such certificate is granted, or his representative, shall, after the expiration of twelve months from the date of such certificate, and thereafter whenever the Court granting such certificate requires him so to do, file a statement on oath of all monies recovered or realized by him under such certificate.

'If the monies so recovered or realized exceed the amount of debts or other property as sworn to by the person to whom the certificate is granted, the Court may cancel the same and order such person to take out a fresh certificate and pay the fee prescribed by this schedule for such excess. In default of filing such statement within the time allowed, the Court may cancel the certificate.'

"In the course of the discussions in the Legislative Council which preceded the passing of the Probate and Administration Act, V of 1881, a proposal was made by Mr. Pitt-Kennedy that Act XXVII of 1860 and the Court-fees Act should be amended so as to require, from any one obtaining a certificate under the former Act for the recovery of any portion of the estate of a deceased person, payment of a court-fee at the rate of two per cent. on the entire value of the estate. A circular was thereupon addressed to Local Governments calling for opinions on this proposal. The replies show that the weight of authority is altogether against its adoption; but many of them call attention to the fact, already more than once brought to the notice of the Government of India, that the requirements of the note in the Court-fees Act, to which I have referred, are, as a rule, neglected or evaded; that persons taking out certificates do not file the statements required by it; that the Courts have no proper means of compelling them to do so; and that large amounts of debts are thus collected under certificates obtained for trifling sums. Various suggestions have been made for enforcing compliance with the provisions of the note, but there are objections to any device for securing the fee which involves the imposition on the person obtaining the certificate of a duty to be performed after he has obtained the certificate. The great mass of the people who take out certificates are so indolent or careless or unintelligent,

that there is little hope of getting them to comply with the provisions of such a law; and the consequence is that, if it is not allowed to remain a dead-letter, as the present law has been, public officers will be constantly compelled to inflict penalties on large numbers of persons, many of whom have been guilty of no deliberate wrong. The simple plan is that already adopted without any warrant of law by some of the officers consulted, namely, to require each applicant for a certificate to file with his application a schedule of the debts in respect of which the certificate is required, and to amend Act XXVII of 1860 so as to make the certificate good only for the debts entered in the schedule, at the same time allowing the certificate-holder, if he afterwards finds that he needs a certificate for other debts, to obtain an extension of the certificate on paying the additional duty and (if the Court requires him to do so) giving additional security. The only objection that has been taken to this arrangement is that taken by the Calcutta High Court in their Registrar's letter No. 54, dated 10th January, 1880. They fear that 'improper use' might be made of the schedule 'by fraudulent debtors whose debts were not in the knowledge of the applicant at the time (he filed the schedule), or in some way prejudice might arise.' Now, there is little doubt that a fraudulent debtor would take the point referred to, and that he would thereby put the certificate-holder to the trouble of explaining his omission to enter the debt in his original schedule; but there would be no great hardship in this, and there would, on the other hand, be a certain compensating advantage, inasmuch as (as observed in one of the replies to the circular) the fear of this would stimulate applicants for certificates to be careful in compiling their schedules. Assuming that the law is to be amended in the manner proposed, a further question arises as to what debts the applicant for a certificate should be bound to include in his application. Should he be bound to include—

(*a*) all debts known to him to be outstanding, including those which could be realized equally well without a certificate; or

(*b*) only those debts which he chooses to include, because he believes he cannot realize them without a certificate?

"The former, it is believed, would be more in accordance with the views of those who framed the existing law; but it appears to the Government that it would be sufficient to adopt the second mode of valuation, and allow the applicant to take out a certificate in respect of such debts only as he thinks fit. No doubt, a larger revenue might be obtained by insisting on the other mode of valuation; but it is apprehended, having regard to the class of people who take out these certificates, that any system requiring the applicant to give a complete list of debts would, if it was to be thoroughly enforced, necessitate proceedings of an inquisitorial nature for which no sufficient machinery exists, and which it would not be worth while to undertake for the sake of the additional revenue to be obtained. The rule which it is now proposed to lay down, while it dispenses with all proceedings of an inquisitorial or penal nature, may reasonably be expected to lead to some slight increase of the revenue under this head, inasmuch as the certificate being expressly limited in its operation to the debts specified in it, the necessity of including in it all debts except those due from persons standing in some peculiarly friendly or confidential relation will be brought home to the applicants, and debtors will probably become alive to the risk they run in paying a debt which is omitted from it. The additional revenue realised will not, as I have already observed, be as large as if the alternative mode of valuation were adopted, but this is a result which, for the reason I have already stated, the Government is prepared to accept. The present Bill has been prepared for the purpose of carrying out these views. The effect of it, if it becomes law, will be that every applicant for a certificate under Act XXVII of 1860 will be required to state in his application the debts in respect of which he desires the certificate. It will be in his option to include what debts he pleases. He will pay duty only in respect of the debts which he elects to include, and the operation of the certificate will be limited to those debts. If he subsequently desires to include other debts, he can have the certificate extended to them on paying the additional duty. The note appended to article 12 of the schedule to the Court-fees Act will not apply to him. For the rest, the amendments made by the Bill in Act XXVII of 1860 and in the

Probate and Administration Act, 1881, are of an unimportant nature, and merely such as are necessitated by the above alterations in the substance of the law."

The Motion was put and agreed to.

Major the Hon'ble E. BARING also introduced the Bill.

CIVIL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT asked for leave to postpone the motions relative to the Bill to amend the Code of Civil Procedure, 1882.

Leave was granted.

BURMA LABOUR LAW, 1876, REPEAL BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to repeal the British Burma Labour Law, 1876, be taken into consideration. He said that, when he had the honour to introduce this Bill, he explained that the law was practically a dead-letter, and no operations had ever been effected under it, but that it was found to interfere with the free flow of labour from Madras to British Burma. The Chief Commissioner of British Burma had asked the Madras Government that the law should be repealed, and the latter had readily acceded to the proposal. The Bill was one of the shortest, consisting of but one section, and it was not thought necessary to refer it for the consideration of a Select Committee.

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill be passed.

The Motion was put and agreed to.

LITTLE COCOS AND PREPARIS ISLANDS LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law in force in the Little Cocos Island and Preparis Island be taken into consideration. He said that the Bill had been published and circulated. All the replies to it had been received, and they contained nothing to show that any amendment was required in the Bill as it had been introduced.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

The Council adjourned to Thursday, the 3rd May, 1883.

D. FITZPATRICK,

Secretary to the Government of India,

Legislative Department.

SIMLA;
The 19th April, 1883.

Printed and Published for the GOVERNMENT OF INDIA *at the* GOVERNMENT CENTRAL BRANCH PRESS, *Simla.*

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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The Council met at Government House on Friday, the 9th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.S.I., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble R. Miller.
The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.
The Hon'ble J. W. Quinton.

INLAND STEAM-VESSELS BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend the law relating to the Survey, and the Examination and Grant of Certificates to Engineers, of Inland Steam-vessels, and to provide for certain other matters relating to those vessels, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

STEAMSHIPS BILL.

The Hon'ble MR. ILBERT also introduced the Bill to amend the law relating to the Survey of Steamships and the Grant of Certificates to Engineers of those ships, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir Steuart Bayley, the Hon'ble Messrs. Reynolds and Miller and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India*, and in the *Fort St. George Gazette*, the *Bombay Government Gazette*, the *Calcutta Gazette* and the *British Burma Gazette* in English and in such other languages as the Local Governments might think fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the Code of Criminal Procedure, 1882, so far as it relates to the exercise of jurisdiction over European British subjects, and Statement of Objects and Reasons, be published in the *Gazette of India*, and in the local official Gazettes in English and in such other languages as the Local Governments might think fit. He said:—

"This publication is a necessary stage—and it clearly ought to be an early stage—in the progress of a Bill; but, under the Rules of Business as they stood before the recent alteration, the Council could not have ordered the publication of a Bill until a motion that it be referred to a Select Committee or some equivalent motion had been put and carried. However, under the new rule which was passed the other day, the Council may direct the publication of a Bill at any time after leave to introduce it has been granted. The effect of passing this motion, which I now make, will be that this Bill will be published in the usual manner, and that the various Local Governments will have the same opportunity of expressing their opinions on the provisions of this Bill as they have of expressing their opinions on the provisions of any other Bill.

"I give these explanations for the purpose of correcting some misstatements which have been made with respect to the course which the Government have adopted, and proposed to adopt, in dealing with this measure. It has been alleged that we are pushing the Bill through the Council with unusual and improper haste. There is no foundation for this statement. The Government never intended to pass the Bill into law during the course of the present Calcutta session. They have dealt, and they always intended to deal, with this measure in accordance with the ordinary rules of business; and, in dealing with it, they have not departed from the usual course of procedure, except in one particular, namely, that, in order to give the public the earliest possible notice of the nature of their proposals, they sent copies of the Bill and the accompanying papers to some of the leading Journals before any formal order for publication of the Bill had been made by this Council.

"To substantiate this statement let me recapitulate shortly the several stages through which this measure has passed, both before and since its introduction as a Bill into the Council. It originated with a proposal for legislation which was made by the Government of Bengal to the Government of India in the month of March, 1882. That proposal was, in the month of April last, communicated in the ordinary way to other Local Governments for their opinions. On receipt of those opinions, the Government of India considered whether legislation should be undertaken, and, if so, what form it should take. Having come to a conclusion on these points, they submitted their proposals—the proposals which are embodied in the present Bill—to the Secretary of State in Council. The then Secretary of State, Lord Hartington, informed us that these proposals had been very carefully considered by him in Council, that he agreed in the conclusions at which we had arrived, and that he sanctioned the introduction of a Bill embodying the proposals which we had submitted. Accordingly, the Home Department issued instructions to the Legislative Department to frame a Bill, and the Bill, when framed, was placed in charge of the Legal Member of Council, who, I believe, always takes charge of Bills amending the Procedure Codes. I obtained leave to introduce the Bill on the 2nd of February, I introduced it in the following week, and the papers containing the opinions of Local Governments were, I believe, sent to

the newspapers within three days after the introduction of the Bill. Since then the Bill has not been carried through any further stage.

"It has been also alleged that the Bill originated in the opinion of an adviser not sufficiently acquainted with the circumstances of Indian life, the reference being obviously to myself. Now, I do not wish to disclaim or lessen in any way my share of responsibility for this measure, but to say that it originated in any opinion given by me is to say what is not in accordance with the facts. The letter of Sir Ashley Eden was received by the Government of India before I landed in this country. It was sent round to the various Local Governments before I took my seat as a Member of this Council, and I never heard anything about the subject at all until after the replies of the Local Governments had been received by the Government of India. My duty then was simply to form the best conclusion I could after seeing what had been written on the subject, and hearing what was said on the subject, by persons who had an acquaintance with the country which I never affected or claimed to possess. The conclusion to which I came on the materials before me was, that we ought to legislate, and that we ought to legislate on the lines on which this Bill has been framed. That opinion I still hold. But the Bill is the Bill, not of the Legal Member of Council, but of the Government of India, and, that being so, it will, I think, be more meet that I should, on the present occasion, leave to the Head of the Government the task of explaining the policy of what is a Government measure.

"Accordingly, I shall confine myself exclusively to the legal aspect of the measure. But I do not intend to waste your time by reference to any of the so-called legal arguments purporting to show that we have no power to alter the law in the mode in which we propose to alter it. I do not anticipate that my honourable friend Mr. Evans will venture to use any such argument. He is much too good a lawyer to do so. For he knows as well as I do that about the legal power of the Legislative Council to pass this Bill there is not, and cannot be, any question.

"What I propose to do is to give you a dry simple statement shewing the jurisdiction which is, under the existing law, exerciseable by the Courts of this country in cases affecting European British subjects, and the mode in which it is proposed to alter that law by the present Bill. It is necessary that I should do this, because the scope and effect of the Bill have been much misunderstood or misrepresented, and I observe that an important London paper has alleged that we are running atilt against a rule which, as a matter of fact, we do not propose to touch, the rule, namely, which limits the extent of the criminal jurisdiction exerciseable by Magistrates in the mufassal over European British subjects.

"Let me begin by explaining what is meant by a European British subject. The term 'European British subject' is defined by the Criminal Procedure Code (section 4) to mean—

> '(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain or Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal:
>
> (2) any child or grandchild of any such person by legitimate descent.'

"It will be seen that the definition is somewhat arbitrary and artificial. It includes persons who are neither European nor British. It excludes persons who may be in all essential characteristics Englishmen, but who are not of legitimate descent.

"Such being the European British subject, let us see what is the nature and extent of the jurisdiction exerciseable over him in this country in civil and criminal cases.

"First, then, as to the jurisdiction exerciseable over European British subjects in civil cases. That jurisdiction is precisely the same as that which is exer-

ciseable in the case of persons not being European British subjects. Section 10 of the Civil Procedure Code enacts that—

'no person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of the Courts.'

"No person is exempted from that jurisdiction by reason of his being a European British subject; no person is disqualified for exercising that jurisdiction by reason of his not being a European British subject. A Native Judge has the same civil jurisdiction over a European British subject as any other Judge, and may exercise that jurisdiction in such a way as to affect not only his property, but his reputation and his person. He can give judgment against him in a suit for fraud or libel; he can send him to prison for debt; can punish him for contempt of Court; and can issue a warrant for his arrest in case of his non-attendance as a witness.

"So much as to jurisdiction in civil cases. Next, as to jurisdiction in criminal cases. I will deal first with the jurisdiction of the High Courts, including in that expression, not only the High Courts at the Presidency-towns of Calcutta, Madras and Bombay, but the High Court at Allahabad and the Chief Court of the Panjáb at Lahore. The criminal jurisdiction of these Courts is unlimited. No person is exempted from it by reason of race or place of birth. No person is disqualified for exercising it by reason of race or place of birth. Any person may exercise the jurisdiction, whether he is a European British subject or a Native of India. And a Judge of the High Court, whether he is a European British subject or not, is by virtue of his office a Justice of the Peace within and for the whole of British India.

"Then, as to Presidency Magistrates. Here, again, there is no exemption, no disqualification, based on race or place of birth. Any Presidency Magistrate, whether a Native of India or not, can try or commit for trial any European British subject, and can pass any of the following sentences:—

(1) Imprisonment for a term not exceeding two years, including solitary imprisonment;
(2) Fine not exceeding one thousand rupees;
(3) Whipping.

"Lastly, as to the criminal jurisdiction of ordinary Magistrates and Judges in the mufassal. Here there are distinctions between cases affecting European British subjects and other cases, both as to the extent of the jurisdiction which may be exercised, as to the privileges of persons subject to that jurisdiction, and as to the persons qualified to exercise the jurisdiction.

"As to the extent of the jurisdiction. A Magistrate cannot sentence a European British subject to more than three months' imprisonment, or Rs. 1,000 fine, or both. A Court of Session cannot sentence a European British subject to more than a year's imprisonment, or fine, or both. And neither a Magistrate nor a Court of Session can sentence him to the punishment of whipping.

"Then, the European British subject has certain special privileges as to the mode of trial, the right of appeal, and the right to apply for release from custody.

"He may claim to be tried by a mixed jury or a mixed set of assessors, not less than half the number of jurors or assessors being either Europeans or Americans, or both Europeans and Americans.

"If he is convicted on a trial held by an Assistant Sessions Judge or a Magistrate, he may appeal either to the High Court or to the Court of Session at his option. He can appeal against small sentences of fine or imprisonment from which there is no right of appeal in ordinary cases, and if he is unlawfully detained in custody he can appeal to the High Court for an order directing the person detaining him to bring him before the High Court.

"And lastly, he cannot be tried by any Magistrate unless the Magistrate is a Justice of the Peace, a Magistrate of the first class and a European British sub-

ject; he cannot be tried by any Sessions Judge unless the Judge is a European British subject; and he cannot be tried by any Assistant Sessions Judge unless the Judge is a European British subject, has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered by the Local Government to try European British subjects.

"The privilege of being tried by a mixed jury, or mixed assessors, belongs to all Europeans and Americans; the privilege of being tried by a European British subject belongs to the European British subject alone. Now, of all these various rules, the only one which we propose to alter is that which relates to the race qualification of the Judge. We have left untouched the limitations on the sentences which may be inflicted by the Judge. We have left untouched the right to trial by a mixed jury or by mixed assessors; we have left untouched the right to apply for release from illegal custody. The single alteration which we propose to make is this. We propose to substitute, for the disqualification arising from race, a qualification depending on tried personal fitness. We propose to say that a very small number of specially selected Native Magistrates may exercise that limited and qualified jurisdiction which can at present be exercised only by persons who fall within the extremely arbitrary and technical definition of European British subjects."

The Hon'ble MR. QUINTON said:—"It cannot be denied by the most earnest opponents of the present Bill that there is a strong array of official opinion in support of it. The measure which it embodies originated with the Government of Bengal. The Governments of Bombay, Madras, the North-Western Provinces and the Panjáb, the Chief Commissioners of the Central Provinces, of British Burma and of Assam, and the Resident at Haidarábád, who is *ex officio* Chief Commissioner of the Haidarábád Assigned Districts, have all written in no qualified terms expressing their approval of it on the grounds of public policy and administrative convenience.

"It is unquestionable that the Bill, if passed into law, will deprive the European British subject in the interior of being tried in certain cases by a Magistrate or Judge of his own race. I say 'in certain cases,' for, as the law at present stands, there is nothing, should he be unfortunate enough to be committed to the High Court, to prevent his being tried by a Native Judge of that tribunal. Whether this partial deprivation of a peculiar privilege be one which State policy and the interests of good administration demand, is the question this Council has now to determine—a question which the heads of all the Local Governments have answered in the affirmative.

"The policy of the British Government in India for many years has been to throw open to Natives of the country, proved to possess the necessary qualifications, offices in the public service which were at first reserved exclusively for Englishmen. The progress of education, the gradual adoption among the better classes of Natives of India of European standards of honour, integrity and truthfulness, the increase of intelligent interest in public affairs exhibited by the leaders of Native society, have all tended to break down the barriers which obstructed their advancement to the higher appointments of the administration. Successive opportunities of such employment have of late years been afforded to Native gentlemen, which have placed within their reach seats on the benches of the High Courts, and admission to the Covenanted and Native Civil Services. This last privilege will, except in cases of manifest incapacity, lead to the bench of the Sessions Court and to the magisterial and executive charge of districts.

"It is scarcely needful for me before this Council to dwell on the importance of this charge. District-officers have been rightly called the eyes and ears of Government. They are in their districts the outward and visible representation of British authority,—often but a dim and distant shadow,—and upon their efficiency, and on the respect and confidence they inspire, depend the reputation, the influence, and, perhaps in the last resort, the existence, of British rule in India. They are entrusted with weighty judicial and executive functions, and have in their hands powers which may affect the welfare and happiness of hundreds of thousands of human beings; for they, and they only, can adequately

represent and secure a hearing for the wants of their people. Similarly, Sessions Judges preside over the administration of criminal justice in areas co-extensive with, or larger than, those of districts, and have powers of trying all offences, even of a capital nature, committed by persons residing within their jurisdiction.

"To these high offices, for reasons of State policy which cannot now be questioned, Her Majesty's Government has thought it good that Natives of India should be admitted; and the Bill before the Council is only the natural outcome and complement of that policy. It simply invests the holders of them, when they happen to be other than Europeans, with powers hitherto inseparable from these offices.

"It is much to be regretted that this cannot be done without depriving Englishmen in India of a privilege, however small, which they have hitherto possessed, but that it must be done, sound policy and good administration alike seem to me to require.

"With what fairness can Government, which has held out to Natives prospects of reaching the highest posts in the public service, which induced and encouraged them to incur the labour and expense of qualifying for such appointments, turn round upon those persons now, who have satisfied all the requirements for high office, and say—'We make you Sessions Judges and Magistrates of districts, but we find you wanting, by reason of your descent, in the qualities essential to the discharge of a portion of the duties which devolve upon you in those capacities, and for the performance of those duties you must give place to others junior to you in the service'?

"Is such treatment likely to conciliate or win public esteem and confidence for Sessions Judges and Magistrates, to strengthen their hands in the execution of their offices, or to promote that good feeling and cordiality between European and Native Civilians which are indispensable to their working efficiently together? It is obvious that it must produce effects the direct opposites of these.

"No, My Lord. I believe it is now too late to stop short. We cannot retrace our steps, and, as the change now in contemplation must be made sooner or later, and, when it is made, appears fated to arouse passions which we all deplore, the sooner it is made the better.

"The warmth of feeling which has been called forth by the publication of the Bill, and the excitement to which it has given rise, seem to me very disproportionate to the results which may be reasonably expected to flow from it. The number of Native Civilians employed under each Local Government is very small; the localities where there are persons likely to be affected by the Bill are not numerous. Years must elapse before the few Native officers to whom the Bill refers can reach the qualifying offices or prove their fitness to be nominated as Justices of the Peace; and the Local Governments have, under these circumstances, full opportunity for giving effect to the proposals under the most favourable conditions. Notwithstanding all this, it has been assumed, in the vehement discussions which have taken place outside this Council chamber, that the present proposal is one to subject European residents in the interior of the country to the jurisdiction of all Native Magistrates—an assumption altogether unfounded. No Deputy Magistrate, no Honorary Magistrate and no Extra Assistant Commissioner, which classes comprehend nearly the entire Native Magistracy, can be nominated under the Bill.

"Similarly, much of the heated declamation which has been resounding in our ears can only spring from the idea that all distinctions of law between Europeans and Natives of India are to be abolished; but what are the facts?

"The Bill leaves altogether unaltered the main provisions of the law, that for heinous offences European British subjects must be tried before the High Court, that for grave offences meriting a punishment of imprisonment of less than one year's duration they are to be tried before the Court of Session, and

that the accused, if he pleases, can require that half the number of the jury or assessors at such trials shall be Europeans or Americans. The only change made is, that a Magistrate trying a European British subject for petty offences or enquiring into graver charges against him, and that a Sessions Judge presiding at his trial on such charges, shall not of necessity be a European, though such Magistrate, unless a Magistrate of the district, must have satisfied Government of his ability to discharge the duties of a Justice of the Peace.

"It is difficult to find any intelligible reason why an officer of sufficient judicial ability to be appointed a Presidency Magistrate should, when promoted or even transferred to a district beyond the Presidency, forfeit powers which he had been found to exercise in a satisfactory manner; or why a Native gentleman who has proved his fitness for the Bench of the Sessions Court should be declared disqualified from presiding at a trial of a European British subject, when the accused can have the advantage of a number of his countrymen on the jury or among the assessors.

"In several districts of the Lower Provinces of Bengal, where the cry of opposition has been loudest, and where the Bill, if it passes, is likely to have the most extensive operation, trials before Courts of Sessions are by jury.

"The arguments which might justly have been urged a quarter of a century ago, arising from the inaccessibility of Courts in the interior, and their seclusion from the fierce light of public opinion, were discussed and answered in the debate in this Council in 1872, in the speech of Lord Napier of Merchistoun, quoted on a previous occasion by the hon'ble and learned member who introduced this Bill; and, if anything further were wanted, I have but to point to the countless letters and telegrams in the columns of the newspapers arriving every day from different parts of the country; as evidence that, where Europeans in India are concerned, things cannot now be done in a corner."

The Hon'ble KRISTODÁS PÁL said:—"My Lord,—I think I would best consult the interests of the Bill if I should say as little as possible on the subject. I am convinced that I cannot do better than leave it to your Lordship, as the responsible head of the Government, to enunciate the reasons and policy of this measure. I cannot, however, allow this occasion to pass without saying that I look upon this Bill as a legitimate and logical development of the progressive policy which characterises British rule in this country, and that, its principle being sound, just and righteous, my countrymen feel a deep interest in it.

"None, my Lord, can regret more than I do the ebullition of feeling which this Bill has caused. Considering the innocuous character of the Bill, I confess I did not expect it, nor did the Government, I believe, anticipate it. Had it not been for the great and important principle at stake, I would have been the first to counsel the withdrawal of the Bill, rather than oppose the wave of feeling which has risen against it. I have too strong a faith in the character of John Bull to believe for a moment that he will carry to the bitter end his opposition to a noble attempt to establish that equality in the eye of the law which the history of his own country, and the teachings of his own political system, so loudly proclaim. I was young when the hurricane of the Sepoy Revolt burst over the country in 1857, but I well recollect how feelings were torn asunder by the sad events of those days, how furious was the rage of denunciation, and how terrible the voice of vengeance. And yet, when the storm of the Mutiny subsided, the feeling also subsided, and not a few of those who had stood forth as uncompromising enemies of the Natives now stepped forward as zealous champions of their cause. It has been my good fortune to work with many of them, and to profit not a little by their advice, assistance, co-operation and example. Who could for a moment say that the Anglo-Indian of the Mutiny days was the Anglo-Indian of the succeeding days of peace and progress? This is my experience of the character of honest John Bull.

"Pride of race—I use the phrase in no offensive sense—is a commendable feeling. It is an honest and honourable pride. It has been the mother of

good deeds, valiant acts, patriotic exertions and national glory. But there is a higher and nobler pride, that of fostering human happiness under beneficent law, raising the weak and lowly to the level of the strong and high, and making equal law and equal justice the basis of political paramountcy in the world. It is to that noble feeling I appeal. All Englishmen, whether in India or in England, I humbly think, should rejoice that, within the century and a quarter they have ruled India, they have effected such a complete revolution in the Indian mind, both intellectual and moral, that Indian Magistrates are found fit to be trusted with the administration of the laws of the land, not only over their own countrymen, but also over the members of the ruling race. This is a work of which England may justly feel proud—this is a consummation over which all Englishmen may well rejoice."

The Hon'ble MR. MILLER said:—"My Lord, I can hardly imagine a subject likely to be brought up for discussion in this Council concerning which I should speak with greater unwillingness than this Bill. If there ever was a matter to which the proverb 'Least said soonest mended' applied, it is this one. To speak will lead to misunderstanding, and so also will the keeping silence. To the best of my judgment I choose the lesser evil, for there have been misunderstandings enough, for which, however, I cannot feel that I, or those for whom I speak, are in any way to be held responsible.

"No subject for many years has evoked in India so deep or such united feeling on the part of the European community as this Bill. In the presence of a feeling so strong, and I cannot help saying also so powerful for mischief, it is an infinite pity that a measure of this nature, which deeply affects the material interests, as well as the sentiments, of Europeans, should have been introduced without any attempt made beforehand to ascertain their views.

"The disappointment on our part would have been excited under any circumstances, but recent events intensify and attract attention to it; for we have of late been hopeful that the former policy on the part of Government, of relying solely on information derived through official channels, would be relaxed, and that the views of the non-official community would be sought for and weighed more than has been hitherto the custom, and we have been encouraged to form opinions, and at times even taunted with having none.

"The fact that a measure on which, if on no other, the European community in, and connected with, India think strongly and think together, should have been introduced without a word of warning, leads reasonably and properly to disappointment, and tends to throw discredit on the profession of Government when they say they wish to know our views.

"But, from what I and many others have seen of your Lordship and of your Lordship's Government, we are led to believe this must have arisen from some misapprehension; and that, when it is made plain that on this subject the interested class, whom alone the proposed alteration of the law would practically affect, not only have an opinion, but are practically unanimous in it, as regards this measure,—when this, the true state of affairs, is discovered,—the Government may see their way to withdraw their calamitous proposal.

"On this subject I can confidently say the European non-official community think together. I only wish there were less positive proof. I wish it were still a matter of opinion, and that the opinion alone could be accepted; for the very fact of asking the public in a public way to state their views is injurious to the best interests of India. There is hardly another subject which could call the widely scattered, in places solitary and isolated, Europeans in this country so unanimously together as a proposal to subject their personal liberty to Native tribunals in the Mufassal; for the proposal threatens them in all ways—their liberty, their reputation and the stability of their property. The trade organizations in all parts of the country agree in this view: from Karáchi, from Bombay, although the planting interest is entirely absent in those parts of India; in Madras and Rangoon the same response is made; and in Bengal and in Southern India the Europeans in the Mufassal speak practically as one man.

"It seems to me to be altogether a fallacious argument to say that the proposal is at most a trifle. In the first place, it is not a trifle to deprive the European of his most cherished right. The first sign of an inclination on the part of Government to deprive him of his right to be tried by a fellow countryman excites him far beyond what actual immediate danger justifies; and it is not a trifle to stimulate feelings of distrust and indignation in the minds of Europeans in the country against the Government; for this indignation and distrust is not brought into effect directly against the Government, as would be the case in England, but affects rather the country itself and the Natives.

"If means were being sought to stir up and inflame those race antipathies which it is the noble ambition of your Lordship's administration to efface, a more effective one than this 'trifle' could not be found. It is not a trifle; for, if by mischance a Native Sessions Judge or a Native District Magistrate were to misjudge an European and condemn him to imprisonment on grounds which were afterwards proved to have been erroneous, it is perfectly certain that more positive, immediate, I may say, instantaneous, harm would be done to this country than could be repaired in half a dozen years. It is not a trifle; for one of the most common crimes, I will not say one of the ingrained customs, of this country is the fabrication of false evidence in the Courts of law. Perhaps, the hon'ble and learned member who introduces the Bill may think I am only uttering one of the common Anglo-Indian fossilized prejudices; but I would appeal to universal Indian experience to bear me out. False evidence is cheap. One single miscarriage of justice through the medium of false evidence sworn before a Native Magistrate will do more infinite mischief, by driving English workmen and English capital out of the country, than the united efforts of Government and of all the guarantees they can offer can repair in a quarter of a century.

"If a trifle, then, why in the name of common sense provoke all their animosity for the sake of it? It is difficult in a matter like this to appeal to experience that is purely English. This country is full of anomalies, and it is difficult for the English mind, unaccustomed to the facts of Indian life, to discover how it is that a practice which is submitted to without demur in a Presidency-town should be so bitterly resisted in the Mufassal. The answer is simple. A public opinion, a Press and legal assistance are at hand here. There, there is nothing but a Judge to condemn and a jail to confine. English enterprise—and on this side of India at least there is very little enterprise of any kind except English—is largely concerned, and English capital largely invested in this country, especially in Bengal. The indigo factories, the tea gardens, and the consequent inducement to that migration of population which is so urgently needed in parts of India, mills and mines, are all supported by English capital, and the tendency has been to increase this. It has begun to be recognized by European capital that India most wants to buy what England most wants to sell, namely, material for increasing the trading power of the country; and a stimulus has lately, under the auspices of your Lordship's Government, been given to the inward flow of capital.

"But there is one thing that European capital will not do. It will not entrust itself to Native Indian management. It is hopeless and useless to say this is the result of prejudice. Possibly it is prejudice. But the result of the prejudice is a tangible factor, which cannot be denied, cannot be ignored, and which must in fact be acknowledged. Capitalists will not entrust their money to Native management, and they are satisfied the feeling is well founded. I will not give reasons for this, for I do not wish to give unnecessary offence, but I ask your Lordship to take note of it.

"Capital employed in the Province is invested on the faith of European agency, but such agency is expensive and is not employed in greater strength than the circumstances of the case render positively necessary. A practice exists in the Mufassal—I am not drawing on my imagination, I am not uttering an Anglo-Indian prejudice, I am stating a fact which is known to every zamíndár as well as to every raiyat, to every official European equally as to non-officials who ever engaged in litigation, that the practice of bringing false

charges to injure rivals or to gratify a grudge is a common practice. This is a fact of which European capital has to take account before it allows itself to be locked up in India, and capital reflects that, if an European manager is removed from the charge of the enterprise on which he is employed in the Mufassal at a critical moment and imprisoned on a false accusation, the loss and damage may be overwhelming.

"No Native criminal tribunal in the Mufassal can, under these circumstances, command the confidence of our employés. Anything that touches the personal safety of our European employés in the Mufassal reflects back again on us, and, if it threatens their safety, it deters the inflow of capital. It is said this is all prejudice. We think it to be fact. Capital is sensitive, and, when you deprive the investor of one of the safeguards on which he mainly relies, namely, the right on the part of his employés to be tried by one who, whatever may be his knowledge of the criminal law, is at least a fellow-countryman and capable of understanding, as one of ourselves, our own feelings, it is of no sort of use to assure that capitalist that what he looks upon as a safeguard is only an 'anomaly'.

"It is only eleven years ago since Sir James Stephen addressed this Council on the same subject that is now before us; and, in allusion to the law which had then been decided upon, but which it is now proposed to alter, he used the following words:—

'I need not remind the Council of the extreme warmth of feeling which discussion upon a measure of the nature excited at no distant date, nor need I insist on the great importance to the Government of the country of the existence of harmony between the Government and the general European population.'

"These words still hold true. In what respect have circumstances changed since they were spoken? Is a compromise in itself more objectionable now than it was then; or are the facts which rendered the whole law a tissue of compromise in any manner or in any degree of manner different?

"The Europeans who have capital in this country do not think so, and they look in vain to anything that has been stated in advocacy of the Bill for reasons which justified a change in the law. A compromise the whole law is, and a compromise it must remain until the conditions of daily life in this country render a simpler law admissible.

"Is this compromise,—the least objectionable, the least actively offensive, of any that are to be found within the four corners of the statute-book—highly valued by the section to whom it applies? We have the traders' and planters' association from every part of India answering with one voice. I think it is a most regrettable thing, the idea of being called upon to answer the question had ever to be proposed to them; but of the fact of their reply there is no sort of doubt.

"My Lord, the exasperation of race that is now going on is terrible and deplorable. Enough harm has been done, and yet the exasperation is increasing every day. It has not done so yet, but it is leading to a sense of insecurity. If the Government depart from Calcutta to Simla, leaving the population of Bengal 'to stew in the juices of mutual animosity' engendered by this most unfortunate proposition, the mischief, which will not be prejudice, but a fact, not imaginary but tangible, may become beyond repair; and I call upon those of your Lordship's Council who have served their years in the country, and who have more than a theoretical knowledge of the people, to tell your Lordship frankly that I have not overstated the case. And of yourself, I would earnestly beg, in the interest of that concord between the races which you have so much at heart, to withdraw this Bill, which satisfies no one, and which, with the smallest amount of good, does almost the largest possible amount of harm.',

[The spectators present here applauded the last speaker by loud clapping of hands.]

His Excellency THE PRESIDENT said:—"It is a rule of this Council, and of all legislative assemblies in the world, that those persons admitted as spectators

should not applaud on either side any of the sentiments delivered, and it is my duty to enforce that rule. I am quite sure that those gentlemen who have applauded on this occasion did so from forgetfulness, but it is a rule which must be observed; and, although sentiments are felt on one side or the other, they must not be expressed."

The Hon'ble MR. EVANS said that the motion for publication was purely formal. It was only a strong sense of public duty, and a strong conviction that the present deplorable state of things ought to be put an end to at once, that led him to speak at this stage of the Bill. The question raised by this Bill, as stated by the hon'ble mover, was whether they "could with safety, and ought in justice, to re-open the settlement or compromise of 1872." Mr. Ilbert had admitted, practically, that he was bound to show three things—

(1) necessity for disturbing the settlement of 1872;

(2) that the new settlement proposed was a durable and stable one; and

(3) that the new scheme was one conducive to the "effectual and impartial administration of justice."

He (MR. EVANS) emphatically denied that any one of these propositions was made out. There was no administrative necessity; there was no element of finality or durability in the proposal made, and he challenged any one to say that justice would be "more effectually or impartially administered" under the scheme proposed by this Bill.

In order to explain the compromise of 1872, he was obliged to take the Council back to 1857, to show how the matter really stood; and how and why the settlement of 1872 was come to.

In 1857, European British subjects in Bengal had the right to have their criminal cases (with a few small statutory exceptions) tried by the old Supreme Court. This led to grave inconvenience in bringing down prisoners and witnesses from very remote places on trifling charges.

All persons in India were now in civil cases subject to the ordinary Courts, and no person was exempt from the jurisdiction of any Civil Court, by reason of birth or descent. The Penal Code was then about to be passed, making one body of criminal law applicable to all Her Majesty's subjects in India. And it was proposed, as a complement to the Penal Code, to introduce a Criminal Procedure Code on the same broad principle, enacting that no person should, by reason of birth or descent, be exempted from the jurisdiction of any Criminal Court. This would have swept away at one stroke the right or privilege of European British subjects to have any special tribunals, or special privilege as to the constitution of the tribunals, by which their liberties and their lives could be declared forfeited. There was a great outcry against the proposal and violent public feeling. Meetings were held, and a petition, signed by 1,100 European British subjects in Bengal, was presented to the Legislative Council. They objected to all the proposed tribunals, as incompetent, and to those presided over by Natives, as utterly unsafe.

Debate of 1857.

Sir A. Buller, a Judge of the old Supreme Court, spoke in Council in March, 1857, advocating a compromise. He admitted the grave inconvenience of bringing all charges against European British subjects to be tried by the Supreme Court. But urged that this practical difficulty could be met by the practical remedy of making them triable only by the Sessions Courts—not by the Magistrates' Courts or the Subordinate Courts presided over by Natives.

Sir A. Buller urged that they were practical men, living in a land full of anomalies, which they must deal with practically. He said the Magistrates' Courts, though they gave the Natives far better justice than they ever had before, would give the European British subjects far worse justice than they

had been used to. He did not think it was right to give poorer justice to the European British subjects to avoid an anomaly, if they could give them as good justice as before, without hardship to the Natives. As to the Native tribunals, he thought the European British subjects were right in objecting to them on the additional ground of race antagonism.

The Chief Justice, Sir James Colville, supported him, and drew attention to the well-known habit prevailing among Natives in the Mufassal, of endeavouring to get rid of rivals by deliberately framed false criminal charges, supported by false evidence, and said the combination of executive and judicial functions in the person of the Magistrates prejudiced and biased their minds, and rendered the Magistrates' Courts in India very unsatisfactory tribunals.

Sir B. Peacock, the Legal Member of Council, said that though he had introduced the Bill he would consider the arguments. No division was ever taken on this question.

The Mutiny broke out with all its horrors, and race feeling rose to a fearful pitch. The Court of Directors withdrew the question from the Council, and it was resolved to continue the former system of having European British subjects tried solely by the Supreme Court.

Debate of 1859.

In 1859, there was, however, another debate, which showed that Sir Barnes Peacock had been taught by the Mutiny the danger of carrying abstract principles to their logical conclusion in India, without regard to consequences. Sir Barnes Peacock inserted in the Code a provision disabling Natives in the Mufassal from even committing European British subjects for trial. Mr. Harington (a most able and experienced Civilian) thought this unnecessary. He said he had never advocated the *trial* of European British subjects by Natives, but he thought they might be allowed to commit; and he taunted Sir Barnes Peacock with having at first advocated the sweeping Bill of 1857, and having now gone to the opposite extreme. Sir Barnes Peacock replied that he had never committed himself to it, and that, even if he had done so, it was unfair of Mr. Harington to remind him of it. After the Mutiny he claimed the right to change his mind, and boldly avowed he had done so. Sir Charles Jackson, a Judge of the old Supreme Court, agreed with Sir Barnes, and pointed out the practical necessity of providing special tribunals for this particular class of persons, and showed the utter fallacy of arguing that because Natives were allowed to act as Justices in Calcutta, and to commit Europeans, therefore, it was practically safe to let them do so in the Mufassal. The Criminal Procedure Code of 1861 was eventually passed, leaving criminal jurisdiction over European British subjects practically as it was before.

Code of 1861.

Years rolled on, the echoes of the Mutiny grew fainter, and, in 1871, a revised Criminal Procedure Code was being prepared by Sir J. F. Stephen.

State of things in 1871.

He was in Calcutta at that time, and knew both Sir J. F. Stephen and Mr. Stewart, and, speaking from memory, without any notes of what passed, he would give the Council his impression of the state of things that led to the settlement of 1872. The influx of a poorer class of Europeans from England and Australia had rendered it an intolerable inconvenience to send them all for trial to the High Court in Calcutta for petty offences, and even gave practical immunity for petty crimes. The moderate and sensible men among the European British subjects fully recognised the necessity for giving some jurisdiction to some Mufassal Courts, and the Government pressed urgently for it.

The amount of jurisdiction proposed to be given to the Mufassal Courts over European British subjects was three months' imprisonment to be inflicted by a Magistrate's Court, and one year to be inflicted by a Sessions Court.

The European British subjects could not successfully object to the jurisdiction of the Sessions Judge, provided he was a European, as his duties were purely judicial. But they could well object to the jurisdiction of the Magistrates' Courts, for the reason touched on by Sir James Colville in 1857, that is, the combination of executive and judicial functions in the same person. The Magistrate was head of his district, had to keep the peace, to see that crime and lawlessness was detected and put down, to hold secret inquiries, to act as practical head of the Police, to decide on ordering prosecutions to be instituted, and then, when his mind had been thoroughly saturated and biased by the result of secret inquiries and police reports, to try the accused.

Further, Sir J. F. Stephen was very anxious to introduce by his new Code summary trials, as in Petty Sessions in England, in which there should be no regular record of evidence, save such précis of it as the Magistrate might record in his judgment.

Sir J. F. Stephen justly feared a strong onslaught by the European British subjects on Magistrates' justice. He knew, and all knew, that the finances of India could not afford the severance of the executive and judicial functions of Magistrates, which the interests of justice loudly called for.

The European British subjects were likewise entitled to object to summary trial without a proper record of the evidence, as tending to nullify in practice the much prized right of appeal to the High Court in all cases, which they possessed and still possess.

But there was, further, the danger, nay the certainty, of a fierce agitation by the European British subjects against being subjected to the criminal jurisdiction of Natives in the Mufassal. Any proposal to do this would (it was well known) revive the fire of race hatred and the memories of the Mutiny, which had been waning and dying out slowly, and do much to interrupt cordial relations between Natives and Europeans, and between the European community and the Government of India.

Sir J. F. Stephen was quite willing to concede that European British subjects should not be tried by the ordinary Native Deputy Magistrates, and in this all responsible Government officials agreed with him, and still agree. But Natives had begun to enter the Covenanted Civil Service, and the European British subjects utterly objected to entrust their personal liberty to Natives, whether covenanted or uncovenanted.

This was the problem which Sir J. F. Stephen and Sir John Strachey, and the other experienced men who made the settlement of 1872, had to decide—"Was it worth while, for the sake of asserting the principle (if principle it be) that all Covenanted Civilians should be empowered to try Europeans as soon as they became full-power Magistrates, to risk the explosion which would inevitably have ensued, and which would have done incalculable mischief. Bearing in mind that it was admittedly impossible, and politically dangerous, to carry out in its integrity, in the Mufassal, the broad principle that no man should be exempted from the jurisdiction of any Criminal Court by reason of birth or descent; and, further, bearing in mind that every one connected with Government was agreed that it was necessary to sanction a similar anomaly in the case of Uncovenanted Magistrates, and to enact in effect that full-power Uncovenanted Magistrates, who were Europeans, might try the European British subjects, but that the Uncovenanted Magistrates, who were not Europeans, should not have that power. The strong practical intellects of Sir J. F. Stephen and Sir John Strachey perceived that, to risk such evils to avoid this petty anomaly, which caused no practical inconvenience, after sanctioning so many departures from the only broad principle which could be appealed to, would indeed be to strain at a gnat after swallowing many camels. They knew also the strong practical objections which exist to entrusting this jurisdiction to Natives.

Compromise of 1872.

Accordingly, they informally proposed to the European community, through the non-official members, that, if they would consent to submit to the jurisdiction of the Magis-

trates' Courts and to the summary trials without opposition, they (Sir J. F. Stephen, Sir J. Strachey and others) would agree that no Natives, not even Covenanted Civilians, should have power to try European British subjects. The European community, to whom the proposals were informally made, assented, and the arrangement was embodied in the report and resolution of the Select Committee.

This arrangement was come to, so far as he remembered, during the interregnum between the lamented death of Lord Mayo and the arrival of Lord Napier of Murchistoun, when Sir J. Strachey, as senior member of the Council, practically officiated as Viceroy, and it had Sir J. Strachey's fullest approbation, as appears by his remarks in the debate of 1872.

It was a wise, a statesmanlike compromise, and he felt well assured that the present Government of India, had they had the least idea of the lamentable results that would arise from endeavouring to upset it, would never have brought in this unfortunate Bill.

The debate of 1872 had been entirely misunderstood by Mr. Ilbert in his speech introducing the Bill, and Mr. Ilbert had unconsciously misrepresented the attitude of Sir J. F. Stephen and Sir J. Strachey in that debate.

All the opponents of the compromise in that debate admitted the principle, that only Natives who had become Europeanised in thought, and thoroughly acquainted with European manners and customs, could be permitted to try Europeans. So that a great portion of the proposals in the present Bill were directly opposed to the opinions of the eminent authorities who were appealed to, and relied on in support of it. In particular, so much of the present measure as provided that all Sessions Judges, whether Covenanted Civilians or not, should try European British subjects, was opposed to all authority.

Subordinate Judges from the Uncovenanted Service were now being promoted for their legal ability and aptitude in trying civil cases to be Sessions Judges. Many of them were men of high caste, saturated with caste prejudice, and had never been brought into social contact with Europeans, and were totally ignorant of their manners, customs and habits of thought. This was also the case with the Natives now being admitted into the Covenanted Service under the new statutory rules, without competition and without going to England.

The Commander-in-Chief, in that debate in 1872, although he advocated the admission of Europeanised Native members of the Covenanted Service, yet was altogether opposed to the trial of Europeans by the Magistrates' Courts in the Mufassal, and had moved an amendment to confine the jurisdiction over European British subjects to the Sessions Courts, as suggested in 1857 by Sir A. Buller. The silence of Mr. Stewart, the non-official member, during the debate on the compromise, was due to a desire not to say things which are best left unsaid unless there is necessity, and to the assurance of Sir J. F. Stephen that a majority of the Council would stand by the compromise, and it was, he believed, the effect of the compromise which led Mr. Stewart to go against the Commander-in-Chief in the division on the subsequent amendment.

He made these observations as they were necessary to a correct understanding of the nature of the settlement of 1872 now sought to be re-opened. He did not put forward that compromise as anything legally or morally binding on the present Government; but he thought it was hard on the European British subjects to take away by a separate Act that concession by which their acquiescence in many of the provisions of the Code had been obtained, leaving in the Code provisions and powers which they were not prepared to entrust to any Native Magistrate in the Mufassal. He thought in fairness such a proposal should only be brought on when there was a general revision of the Code.

The power to direct prosecutions on suspicion and then try the case summarily, without record of evidence and without (in a large class of cases) any right in the accused to cross-examine after charge framed, unless the witnesses

happened to be present in Court, were instances of powers which European British subjects were not prepared to entrust into the hands of Natives.

He hoped it was not likely that any Local Government would be so indiscreet as to appoint a Native Magistrate to any district where Europeans were strong and numerous, (a fact, if he was right, which went to show how useless the Bill was); but these powers in the hands of Natives would render the position of the lonely pioneers of European enterprise in remote places untenable and unsafe.

The next question was—

Necessity.

What was the necessity for reopening this burning question? None of the Local Governments consulted had complained of any administrative inconvenience. The reason there was no complaint was not far to seek. Only 11 Natives had entered the Covenanted Civil Service, by competition in England, from 1864, when the first of them arrived in India, to the present day, and he had the authority of the *Statesman* for saying that the import had now ceased, owing to a change in the rules at home. Of these eleven one had left the service under circumstances which he need not advert to; one had gone to Madras and was dead. The remaining nine were thus distributed:—two were in Bombay; one, a young Parsee, a very junior officer, was in the North-Western Provinces; and the remaining six were in Bengal. There were none in the rest of India.

The Circular inviting confidential opinions from the Local Governments was sent out on the 28th April, 1882, when Mr. Rivers Thompson was Lieutenant-Governor of Bengal, and it was singular that that circular was not sent to Bengal, and that no opportunities had been given to the Government of Bengal to consult its officers and the High Court on the subject.

He spoke subject to correction by His Honour the Lieutenant-Governor, who was present, but so far as he (as an outsider) had been able to gather, the opinion of the bulk of the Bengal officers and of the High Court was against the measure, and, so far as he could learn, no administrative necessity had arisen in Bengal, or was likely to arise. It was impossible to allege the existence of administrative necessity in the rest of India arising from the presence of three men only, one of whom only would, so far as he could learn, be immediately affected by it and have the power conferred on him of trying European British subjects. The statutory Native Civil Service had very recently been created, and it would be years before the question of investing them with the power became a practical one.

As to stability and durability—

Stability and durability.

The settlement proposed had no single element of stability or durability. It proceeded on the principle (if it could be said to have any real principle in it) of allowing the Local Governments to determine the fitness of individuals to be Justices of the Peace (Justices of the Peace alone being empowered to try European British subjects), while the area of selection was to be restricted and not left open as in the Presidency-towns, where any fit person might be selected.

Having enunciated this principle of personal fitness (to be judged by the Local Government), the hon'ble and learned mover found himself face to face with this difficulty. Everyone was agreed that it was not desirable to vest Uncovenanted Native officers with this power. They, therefore, must remain disqualified.

But, as the law now stood, Government was empowered to invest any Uncovenanted Europeans with the power, and had largely done so. There were now from 20 to 30 Uncovenanted European Deputy Magistrates, with first class powers in Bengal, who were Justices of the Peace, and had power to try European British subjects. The Uncovenanted Europeans were fit, and, so far as could be learnt, had exercised their powers impartially and efficiently, but it was an anomaly.

This difficulty was solved by disqualifying all Europeans who were not Covenanted Civilians from being Justices of the Peace in the Mufassal, and practically confining, with a few exceptions, the office of Justice of the Peace to ordinary Covenanted Civilians, whether Native or European, and to the Native Civilians admitted under the new statutory rules.

What principle was there in this? certainly not the principle of *fitness*, for no allegation was made against the fitness of the class it was proposed to exclude, that is, Uncovenanted Europeans. There was a difference of race and moral standard. The effect of it was to disqualify the Uncovenanted Natives. This was a fact. It could not be got rid of. This Bill attempted to hide or disguise the unpleasant fact by disqualifying the Uncovenanted Europeans against whose fitness there was no complaint. Thus, an apparent symmetry was produced at the expense of depriving Government of the services of a class of men who have been admitted as Justices of the Peace since the thirty-third year of His late Majesty, King George the Third, to the acknowledged advantage and convenience of the public service.

But his hon'ble and learned friend said there was a principle in this. His hon'ble and learned friend had apparently discovered that there was no privilege of European British subjects as to tribunals to be considered, but a "class of offences" which, from "the circumstances in which they were usually committed" by European British subjects, required to be dealt with by the higher class of Magistrates only. And it was to be presumed that it was this discovery which he considered justified him in disqualifying all Uncovenanted European British subjects from trying so "troublesome and difficult" a class of cases.

The only answer to be made to this was, that it had no basis of fact There was no "class of offences," but there was a class of persons always liable to be accused of crimes, and who sometimes, but rarely, committed crimes.

Individuals of this class were, owing to the circumstances of the country, often "difficult and troublesome" to try. From the nature of things they must be far more "troublesome and difficult" for a Native to try than for an European to try. This class of persons was at present entitled to special tribunals, or to a special constitution of the tribunals by which they are to be tried.

This Bill attempted to disguise the fact—to allow this class to retain all its anomalous privileges as to tribunals (except the one now in question), and to justify such retention, not on the real ground, but on an imaginary ground, that is, that the offences this class commit are of such a character that Government is justified in enacting for the more "effectual and impartial administration of justice" that none but Covenanted Civilians shall try them, with a few exceptions based on no principle.

The Native Press utterly declines to accept this as final, and many of the Native papers, as the *Amrita Bazár Patrika* of March 1st, give it but very faint support, on the ground that the other anomalies are much more objectionable and inconvenient.

There can be no element of stability or durability in such an illusory settlement as this.

Effectual and impartial administration of justice.

The object of these proposals was said by his hon'ble and learned friend to be the effectual and impartial administration of justice. On this point it was enough to say that the proposal was to disqualify a class of men against whose effectual and impartial administration of justice no complaint had been made, and to substitute a class (the Native Statutory Civil Service) whom Mr. Duthoit, Judicial Commissioner of Oudh, declared, in his confidential communication, to be utterly unfit to hold the scales of justice impartially, in cases where Europeans are concerned, and to be often saturated with caste and class prejudices, and who were not necessarily at all Europeanised. Even the *Statesman* (15th February) condemned this class as inferior to many of the Native Deputy Magistrates. Tried by this test, this measure fails on the face of it.

Many of the supporters of this measure were not prepared to go further than Sir Barrow Ellis' amendment in 1872, that is, in effect, to invest with these powers only the nine Covenanted Civilians elected by competition in England; but his hon'ble and learned friend had confessed, as he (MR. EVANS) understood him, that it would be mere tinkering to stop there, and that the Government would not be justified in re-opening the settlement of 1872, unless they could go further and propose a permanent and durable settlement of the broad question.

Satisfactory tribunal.

There was another test which he would suggest when any change in a tribunal was proposed,—that is, that the tribunal, as reconstituted, should, if possible, have the respect and reverence of the class from which the accused are drawn, and should (if possible) be regarded by the accused and his class as a satisfactory tribunal. This is a cardinal point in the administration of criminal justice. It would be waste of words to demonstrate that the proposed measure utterly fails to stand this test.

He failed to see any sufficient reason for proceeding with so unnecessary and useless a Bill on the face of so strong and intense a feeling as existed, a feeling in which the whole European community in India were practically unanimous.

He was not oppressed by the wonderful "unanimity" of the confidential answers of the Local Governments consulted. Bombay stood in a very peculiar position, with comparatively a small Mufassal, and a small European population in it. The voice of experience in Madras was against it. Even the Governor thought it was a pity to introduce it now. Sir A. Lyall said it would not for many years become a practical question in the North-Western Provinces. The others had nothing to do with it as a practical question, as a measure which would come into immediate operation.

A number of one-sided extracts from the debate of 1872 were sent with the letter of Sir A. Eden and Mr. Gupta's note, and these gentlemen had, he ventured to think, given opinions without sufficient consideration on points which to them must have seemed more abstract than practical. He excepted Mr. Elliot in Assam, who pointed out the need of caution, and Mr. Howell in the Birárs, who showed the grave nature of the issue raised. But it was sufficient to say that all who had given opinions in favour of the change were mistaken as to the feelings it would arouse, and had apparently made no enquiries among the class to be affected.

The voice of Bengal was absent. He could not accept Sir A. Eden's letter as a demand by the Government of Bengal for legislation. Considering the circumstances under which it was written—on the eve of departure, and without any consultation of officers or of the High Court—he looked on it as the individual opinion of Sir A. Eden, suggesting a consideration of the subject at a fitting time, and recording his own opinion. He knew there were in it the words "the time has come." But on the whole he thought it was more a record of individual opinion than a demand for immediate legislation.

Sir A. Eden's views on the subjection of Europeans to Mufassal Courts had never been in harmony with that of the bulk of Europeans in Bengal, official and non-official, as appears by what took place in 1857, when he came into collision with the Judges of the Supreme Court. But he had too great a respect for Sir A. Eden's tact and administrative ability to think that he would have initiated legislation on this subject without trying to ascertain the views of his officers and the High Court and the European community. So much for the "consensus" of opinion.

Then it was said, how can Europeans object to Native Magistrates in the Mufassal and yet suffer them in the Presidency-towns? The power and influence of the European community—the blaze of publicity—the Press—the Bar—the presence and powers of the High Court—are sufficient answers. Besides, the Presidency Magistrate's functions are strictly judicial, and the

practice of deliberately attempting to ruin rivals or enemies by cunningly concocted false charges, which is still as common as ever in the Mufassal, is practically unknown in Calcutta.

Argument to show the difference between the Presidency-towns and the Mufassal was unnecessary. His hon'ble and learned friend had just explained to them that in the Presidency-towns no person was, by reason of birth or descent, exempted from the jurisdiction of any criminal tribunal, and he had just read a long list of the anomalous exemptions accorded to Europeans in the Mufassal. It was not proposed to abolish any of these exemptions, except the one dealt with by this Bill. No responsible adviser of His Excellency, who had any knowledge of the country, could be found, who would propose the abolition of these exemptions or the extension to the Mufassal of the broad principle that Europeans should be subject to all the Cri minal Courts in the Mufassal exactly the same as Natives are. So long as this was so, it was waste of time to combat any argument drawn from a fancied similarity between the Presidency-towns and the Mufassal.

Then there was the alleged slur on Natives; but he denied that any set of judges, any more than assessors or jurymen, were entitled to complain of the privilege of the accused as to his tribunal as a slur on them. If there was to be any question of slur, the large class of Uncovenanted Europeans who were disqualified by this Bill might well complain. He himself, though a Justice of the Peace in England, and now qualified to be a Justice of the Peace in Bengal, Bihár and Orissa, would be disqualified by this Bill.

But the question before them that day was not a pure matter of argument. The reality and intensity of the feeling against the Bill was patent, and was one of the main points they had to consider as practical legislators.

He felt it his duty to offer some remarks on the reasons for this at the risk of giving pain.

First.—There was a reason, of which all would admit the weight. It was most desirable that a Criminal Judge should be able to put himself in the place of the accused, so as to judge of the probability or improbability of his having committed the alleged offence. This was desirable everywhere, but especially in India. Criminal trials here generally proceeded entirely on oral evidence. The lamentable untruthfulness and untrustworthiness of the bulk of Native oral evidence had been repeatedly commented on by the Privy Council, and was well known to all. It was, therefore, particularly necessary that the Judge should be in a position to try such evidence by the test of its probability or improbability. But, if he was alien in thought and moral standard, and ignorant of the manners, customs and habits of the accused, how could he put himself in his place?

It was to this power in the Judge, of putting himself in the place of the accused, that the lonely planter in the Mufassal, confronted with a false charge and false witnesses, and far away from help, mainly trusted for protection.

He might be told that defect was exhibited by Europeans in trying Natives. It was so, but that was no reason for introducing the same defect into the trial of Europeans. We had given the Natives an administration of justice immeasurably superior to anything they ever had before. The unswerving uprightness, probity and intense desire to do impartial justice shown by European Judges had been an education to the people of the country, and they constantly showed their appreciation of it by asking to have their cases transferred from Natives to Europeans.

The second factor was race antagonism. This feeling, which had been fanned into a fierce flame by the horrors of the Mutiny, was slowly dying out, but it was most unwise to stir the embers while so many of the generation who went through the Mutiny were still alive. The vitality of that feeling had been lamentably illustrated by the outbreak with which this Bill had been greeted.

The third and most serious consideration was that dwelt on by his hon'ble friend Mr. Miller. The Europeans did not trust the Natives as they trusted fellow Europeans. He knew many upright and honourable Natives. But the broad fact remained that the bulk of the Anglo-Saxon race in India looked upon the Natives as men bred in a degrading idolatry, and surrounded from their infancy by influences most adverse to truth, uprightness, honour and every quality which Englishmen most revere, and which they demand especially in a Criminal Judge. They think that many centuries of Christianity, and of free political life, have given them a moral fibre not to be found among Natives, especially Natives of Bengal.

Can it be wondered at (unless Christianity is a sham, and the belief in national character a delusion) that they refuse to recognise as an Englishman a Native who has spent two or three years in England.

When passed, the effect of this Bill would be to establish tribunals for Europeans which they objected to and refused to respect. There was a vast difference between civil and criminal law. Broadly speaking, the one affects the purse, the other the person. We might be willing to have Natives educated at the expense of our purses; we were not willing to have them educated at the expense of our persons. Every conviction of a European in the Mufassal under these circumstances would be looked on as unjust, and would revive the bitter and violent animosities which they all knew were raging around them that day.

Some said the agitation was a mere flash, and referred to the Black Act of 1836 in Macaulay's time; but a reference to Trevelyan's life of Macaulay would satisfy anyone that the circumstances were widely different, and that no inference could be drawn from the one to the other. That was a Calcutta agitation; this was universal over India. That was about appeals being transferred from the Supreme Court to the Sadr; this was a far graver matter. Besides he thought any Government which proposed to deal with the present European community as "a mere handful of settlers," whose protests might be treated with contempt, would be forgetting the difference between 1836 and 1883.

Was this Bill likely, in any view of it, to remove any evils comparable in magnitude to those it was creating and would create?

This measure would have the effect of giving the power to Uncovenanted Subordinate Judges, when promoted to be District Judges, to try Europeans, though they might be utterly ignorant of their thoughts, ways and customs.

It would give this power to nine Covenanted Civilians who had been to England, but whom the Europeans in India declined to accept as Englishmen.

It would give this power to the new Native Statutory Civil Service who are declared by Mr. Duthoit to be utterly unfit, and who also are, or may be, Uneuropeanised and ignorant of Europeans. These persons may or may not form a useful machinery for governing Natives, selected, as they often are, on account of the influence and social position of their families. But they are quite unfit to be Criminal Judges over Europeans.

It was a measure which had exasperated Europeans to the highest degree, and had interfered with their growing cordial relations with the Natives and destroyed the harmony between the European British subjects in India and the Government, and would do so to a much greater extent before it was passed. It was a measure which provided a machinery for producing periodical outbursts of race feeling whenever a European was convicted by a Native in the Mufassal—outbursts which would do immense harm and might lead to disastrous results.

It was a measure for which there was no necessity and one which touched almost the only point which was capable of uniting the whole of the Europeans in India as one man against the Government.

It was a measure which could, in any view of it, do little or no practical good, while it had already done and would do incalculable harm.

It was a measure which Government would never have introduced had they known the strength of the feeling against it.

He, therefore, implored the Government to show the truest form of courage by confessing an error of judgment and withdrawing the Bill at once.

The Hon'ble MR. THOMAS said:—"My Lord, the hon'ble and learned member on whom, by force of his position, has devolved the duty of being the mover of this Bill, has stated emphatically, and re-asserted it on behalf of the Government, that the only object of its introduction is 'to provide for the impartial and effectual administration of justice.' It is a high claim,—a claim so high that every Briton is predisposed, without a thought, to bow to it instinctively, for a love of impartial and effectual justice is ingrained in him. Impartial and effectual justice is just what is in the very nature of every Briton to give to everyone within his power the wide world over. There is a danger, therefore,—a serious danger,—that, heralded with so high a claim, this Bill may be accepted without sufficient examination; and for that very reason it is the more desirable and necessary that it should be stripped of any adventitious advantage it may derive from such heraldry. For we all love justice, and an equal love of justice will surely be conceded to those who, like myself, may venture to traverse this Bill. Presuming that so much will be conceded, we shall commence our examination of the Bill on more even terms, and, bearing in mind that the test by which we are invited to try this Bill is, that its object is 'to provide for the impartial and effectual administration of justice,' I will ask, first, what, in prosaic business detail, are the actual particulars in which the dispensation of justice to British subjects is to be improved, so that it shall be more effectual, more impartial, than it has been heretofore? and what the means by which it is to be effected? The answer is supposed to lie in the Bill: there we find that it is by the entrusting of it to Natives of Hindustan that it is to be better done than when it was entrusted to Englishmen. Natives of Hindustan, Foreigners and strangers,—strangers in great part, some more, some less, some altogether—strangers to the social customs, the nice ideas of chivalry and honour, the thousand and one Western strains of thought and surroundings which underlie the springs of action of the British subject; some only partially acquainted with the very language of the Englishman; men who, at best, and but limitedly, have mixed only with one class of European, the educated and more refined class,—they are to be entrusted with the trial of Europeans, the majority of whom are likely to come from classes of which they know practically nothing, whose only English, too, is an English sufficiently different from anything they have seen in a book, or heard from the lips of any educated European; sufficiently different to throw them out completely, to utterly prevent their getting sight of the point which shall show them the animus which is its gist, the depth and tenor of the provocation which is its justification or its palliation; men who, from want of converse with them, are incapable of appreciating the weight to the individual of the punishment they are called on nicely to apportion; men who have never been on board a ship in their lives; men—Brahmins for instance—whose very religion makes it a sin for them to experience a sea voyage, a sin for which they will be excommunicated; men who are under every possible disadvantage in forming any adequate conception of the necessity, for crew and passengers and cargo, that the commander of a vessel, leagues at sea, without Police or Court within months of him, should be complete master; the necessity—the absolute necessity—that his word should be law; men without a conception of the hardships of the sea, of the numerous petty means of tyranny open to a captain,—how can such men weigh rightly the use and abuse of power at sea? How can such men judge rightly between rough men of few words—rough captain and rougher seamen, using, too, a nautical jargon that is worse than Greek to them? And yet we are invited to pass this Bill, in the expectation that the administration of justice to British subjects will, in the hands of such men, in the hands of Natives, be more effectual, more impartial, than if it is left, as heretofore, to Englishmen.

"All this, I may be told, applies equally to the trial of Natives of this country by Europeans, as it does to the trial of Europeans by Natives. But, I

venture to say, it does not. Europeans in India are compelled to learn the languages of the country; they have to learn them before they are even appointed in England; they have to still further qualify in them in this country before they can be promoted: the Natives, who are to try Europeans, are not so compelled. It is specially provided by Statute that the great and increasing majority of them are to be appointed without such examination. Again, Europeans in this country pass their lives among the classes they have to try, the criminal classes of all shades, the labouring classes, the agricultural classes, as well as the better classes; learning their patois, their habits of thought, and their religion or their superstition; learning everything that underlies their springs of action; walking his fields with the farmer, the jungles with the junglemen; listening to their tales of joy and grief; sympathising with and labouring for them; present at their festivities; leading their combined action for any good; hunting, shooting, fishing with them; carried by them by day and night in travel; ever accessible to them in camp or Court; speaking direct as man to man with them; caring, aye, and exerting themselves to the sacrifice of health and even life, for them in famine; and walking daily amongst them, seeing to their village sanitation and the provision of medical treatment when they are dying around them of cholera; making it the one object of their lives to sympathise with and work for them. Such, my Lord, is the life of a district officer. By such means does he qualify himself to enter into the case of the Natives committed to his care. It is no fancy sketch. I have been through it myself, and it is being gone through every day in India by hundreds. Such are the means by which Englishmen have qualified, and continue to qualify, themselves to do justice to the people among whom they live. Will anyone assert the same, or anything approaching the same, of the Natives of this country that are to be entrusted with jurisdiction over British subjects? Have they lived among captains and seamen, soldiers and engine-drivers, mechanical engineers and surveyors, planters and merchants? What have they in common? They are absolutely a sealed book to them, and will be, for they shun them. Only the better class of Englishmen do they know anything about—only the educated official whom they have to meet in business. Of that class only, from whom will never come the subjects of trial, have they any knowledge at all; and even that knowledge is very superficial, and is only what the European chooses to give them, not what they search for for themselves, as we do among them. They do not court knowledge as a duty with a view to be in a position to do justice as the European does; they do not throw open their houses to us as we do to them. Their very religion forbids it; their very religion disqualifies them for ever having an intimate knowledge of the inner life of the European; and, if the fact is so even with the better classes of Europeans in all but the Presidency-towns, and to a large extent even there, it is still more so in connexion with the classes of Europeans from whom criminal cases are likely to come. For that class of Europeans they studiously avoid, not only on religious grounds, but also because they are afraid of them. The courteous Asiatic does not understand their rough ways; and there is no reason why they should ever understand them, for there is nothing to bring them into every-day contact with such men. They do not seek to know anything about them, and yet they wish to try them. It is surely irrational! And apart from not seeking, as a duty, to comprehend the habits of thought of the classes they may have to try, there is nothing accidental even to throw them together. They have no subjects of common interest.

"But I will withdraw the statement that, disqualified though they are, and, in accordance with all their preferences, will continue to be, they irrationally wish ignorantly to try Europeans,—I will withdraw it because it is not mine, but an imputation of their own countrymen, an imputation cast by a very few, who grasp at power, an imputaton tha t I believe to be utterly without foundation among the masses. My belief is, and I speak from some little experience of Mufassal life, that the very great majority of Native officials in the Mufassal,—and it is only the Mufassal that the Bill deals with,—the very great, the almost unexceptional, majority would infinitely prefer not to have the

white elephant that the Bill proposes to give them. It is only just to say that they are conscious of their disqualifications to try British subjects, and do not want to have to do what they cannot do to their own satisfaction; they are conscious that the Englishman is far more competent to try his fellow rightly, and they would infinitely prefer to leave the difficult task to him; they are content to be left to try only their own countrymen whom they do understand.

"But we have not yet got to the bottom of the incongruity; there is still a lower depth, and one that touches Englishmen, as indeed it touches all manly men, very home. I allude to the wives and daughters of our land. If the Native who is to try has but a very partial knowledge even of the better classes of Englishmen with whom his business compels him to mix outwardly, and a much less, if any, right knowledge of the lower class of Englishmen from whom he is free to keep away, still less has he any knowledge of the ladies, of the wives and daughters of their families. And yet he is to try them; for the term British subject, be it remembered, includes both sexes, and the English lady as well as the British sailor and the British soldier is to be subjected to the jurisdiction of Asiatics. A false complaint lodged by her ayah or Indian lady's maid, by her tailor that sits daily in her verandah, by any one of the household servants, grooms or coachmen, whom, as mistress of the house, she has to order on her husband's behalf,—a false complaint by any irrepressibly obtrusive hawker, who comes unbidden into the very verandah in which she is sitting and will not leave it,—a false complaint by any outside petty cobbler who has been paid his due, but thinks to get twice his due by means of vociferating clamour amounting even to menace, in a manner quite inconceivable to, and incredible by, those who do not know this country,—a false complaint by any of these may any day subject English ladies and English women to be tried by Foreigners. These are no ideal pictures. They are every-day circumstances of middle class Mufassal life, unexperienced, perhaps, by the well-to-do, but well known to their poorer unofficial brethren. Patience outlives the provocations, and nothing comes of them, because there is the certainty of a fair trial in the background, and the Court is the Court of a countryman. But when it comes to be known, as it will be known if this Bill passes, that anyone can summon an English lady before a Native, and that, right or wrong, she will, in 99 cases out of 100, pay any fine rather than appear, and it is borne in mind that, even if she does appear and answer to the charge, the complainant has more than satisfied himself with the sweets of the annoyance he has caused,—when this comes to be known, there is hardly room to doubt that complaints of this sort will become distressingly numerous. The position of English ladies and English women, left alone in their houses while their husbands are in Court, or camp, or office, or workshop, will be very distressing even in the bare contemplation. The security, and the feeling of assurance of security, which they now have, in trial by a British Magistrate, will be gone from them, and they will be subjected to the jurisdiction of Asiatics.

"I have cursorily alluded to the falsity of the complaints; but only most cursorily, both because I took it for granted that the proneness to false complaints in the Mufassal was well known, and also because I shrunk from dwelling on that side of the question—I shrunk from it, because unwilling to make unkindly imputations. But now that it has been stated by one hon'ble member that such is not his experience in the Mufassal, and the hon'ble and learned member to my right (Mr. Evans) has advanced opposite experience, I feel bound to say that my experience of the Mufassal, extending as it does over nearly a quarter of a century, is entirely in accords with that of Mr. Evans, that false complaints and false evidence are common in the Mufassal. I speak not of what may be called exaggerations and hard swearing; I speak of deliberate machinations, that are perfectly staggering and appalling to the European; of rehearsals held in the presence of all the witnesses, that they may be thoroughly tutored in all details; of dress rehearsals, so to speak, held just before the trial, and in the very precincts of the Court to refresh memory. I could instance a case in which a poor man was hired to take a blow from a billhook, and all the witnesses were

present to see and testify to the blow in all detail, only instructed to substitute an European for the Native striker of the blow. I could produce volumes of such evidence, but time will not allow. And I have no desire to do more than is absolutely necessary to bring that side of the question forward, and have only been constrained, as I have said, by the conflict of opinion.

"And why, let me ask for Britons, as they will ask,—why are they to be thus subjected to the jurisdiction of Asiatics? Not on account of any necessity of the case; not because it cannot be helped; not because the Natives wish it, but because—yes, that is what we are asked to expect—because the justice thus provided through the medium of the Asiatic will be more impartial, more effectual, than that dispensed by the Englishman himself; that is what the proposal comes to; that is what the Bill says in effect; and my business is with the Bill, the people to be tried by it, the people to be empowered by it. The only object of the Bill is 'to provide for the impartial and effectual administration of justice,' and that is the test by which I am invited to try it. If it be said that I rather overstrain the argument by applying the claim of impartial and effectual justice to the people to be tried by the Bill, and not, as was meant, to the magistrates and judges who are to administer it, then I plead in answer that such words should never surely be said with reference to any but the persons who are to experience in their proper persons whether the justice meted out is or is not impartial and effectual; that they have no applicability to anyone else, least of all to the mere machinery, the judges and magistrates, who only give life and existence to the Bill, and are merely the means by which the more impartial and effectual administration of justice is to be provided.

"Whatever may have been said elsewhere on the other phases of the Bill as it affects Natives, by removing an anomaly and a stigma, it cannot be that the claim by which we are invited to try the Bill, that of providing impartial and effectual justice, can have been put forward with reference to anything but the quality of the justice administered to the people who sought it, that is, to the complainant and accused. The question of anomaly and personal stigma is perfectly distinct. We shall come to that separately hereafter, but at present we have only to do with the claim that the Bill 'provides for the impartial and effectual administration of justice.'

"To the Englishman at home, who knows not this country, it may even seem that it does so provide; but when the Bill is examined in the light of the experience of those who have spent their lives in the study and the service of this country and its people, who can throw upon the Bill the light of actuals rather than of theories, it is then that it becomes apparent that the circumstances of the position afford no real foundation for the expectation that the administration of justice to British subjects will be either more effectual or more impartial for being entrusted to Foreigners and strangers rather than to fellow-countrymen—to Natives rather than to British subjects.

"But this, I may be told, is my idea—only my idea. Let the Native speak for himself. I shall quote, my Lord, from the *Madras Native Opinion*, a newspaper edited by a Brahman of considerable culture, a Native who has the interests of Natives, the interests of his country, very much at heart. He writes in a leading article of that paper, dated 14th February, 1883:—

'Let us take, for instance, the case of a Deputy Magistrate of the first class who is called upon to try a case between two Europeans, one, say, a Covenanted Civil Servant, and th eother a merchant or a planter. The case may be one of assault or defamation, and have arisen out of some episode at a ball, a club-room or a dinner party. Now, if the Deputy Magistrate happens to be a Brahman (as almost all of those on the Madras establishment are) who has not been in Madras, and whose knowledge of English is but limited, what a predicament the poor man is sure to be in? He cannot possibly understand the allusions which will be made, and the conventional terms used in such a case, and he cannot very well engage an interpreter to explain what is meant! We leave our readers to imagine what the result will be, and what satisfaction the Magistrate's decision is likely to cause to the litigant parties.'

"And in a subsequent issue the same Native editor says—

'We must not lose sight of the fact that, while nothing is easier than for the European to obtain evidence or information on such matters in Native society as he might not know, the

Native Magistrate is very differently placed. The *Munshí* and clerks of an Anglo-Indian Magistrate are Natives of the country, and if they are not able to supply it themselves they can easily obtain for their master any information the latter may need in connexion with the disposal of cases. Now, to whom can the Native Magistrate turn when he has an Englishman brought before him?'

"And this Native editor is not alone in his opinion of the unfitness of his countrymen to try British subjects; but I must revert to the objection that, if it is right in theory for Europeans to try Natives, it is right also for Natives to try Europeans; and again I will say that, in my humble opinion, it is not so, because the case is not parallel. It is not as if Englishmen were asking to have authority to try Natives, as Natives are asking for jurisdiction over British subjects. The whole history of our Law Courts in India shows the fallacy of such an argument. Englishmen have no desire to try Natives because they are Natives. Indeed, they would never have tried them at all if they had been capable of trying themselves, and our whole aim ever since we came to this country has been steadily in the direction of fitting them to try their own countrymen; and as we have found them more and more qualified, so we have gone on extending their jurisdiction over their countrymen, or, in other words, resigning to them more and more of the judicial work in connexion with their own countrymen that we had in earlier years to do for them.

"Thus falls to the ground the argument that, if Englishmen try Natives, so, in fairness, ought Natives equally to try Englishmen; for, as we have seen, the Englishman does not want to try Natives, and is getting rid of the duty and consigning it to their countrymen as fast as he legitimately can. The Native also, with a few exceptions, does not want to try Englishmen, and is not qualified to try them even if he wished to.

"Once more, this same history of our legal dealing with India, if examined a little more closely, will fully explain the seeming anomaly of British subjects being exempted from Native jurisdiction, the seeming anomaly of which so much has been made. When we came to this country, did we find equitable law courts in which Englishmen and Natives could alike obtain equal justice? did we upset them and introduce this anomaly in favour of our countrymen? No. We found Surája Dowla, and the Black Hole, and the like of that. There was no such thing as law and justice. The land was a land of violence, of systematic and periodical marauding, of constant blackmail, of daily uncertainty of life and property, in short, of all the many forms of anarchy and misrule and lawlessness which I may not stay to dwell upon. It is matter of history, and it still lives in proverbs, customs, castes, tenures, structures, which point to the then every-day existence of a state of things for which there was no remedy but to sweep it clean away. It was for us, a mere handful of strangers, to introduce law and order, and to import into this country as much justice as was possible in the circumstances. We were too few in number to give to every Native with our own hands as good justice as we were accustomed to in the land from which we came; but we were enough to mete it out to our own countrymen, from whom there probably was not more than a case or two in a decade; and not only were they entitled to have no less a scale of justice than we were able to give them, but in the earlier days it was more, perhaps, to the interest of the Native than of any one else that Britons should be tried by Britons, who had both the courage and the mind to enforce law and order on their own countrymen, and to put down with a strong unwavering hand any disposition to take advantage of being members of the dominant race. Other than Britons there were none in the early days, because all other Europeans were deported. Thus it came about that Britons in India have till now been under the jurisdiction of Britons, and there was, and is still, *no necessity* for their being under any other jurisdiction.

"With the Natives, however, the necessities of the case were very different. It was impossible that the few and far between Englishmen should, in their own person, try all the teeming millions of Natives over such wide areas. The attempt would have been too extravagantly quixotic. They did the closest they practically could to it. In short, they aimed at the same thing for both; they aimed at giving the Native, as they gave their countrymen, the very best justice in their power to

give; and while they gave the Briton the same as he had been accustomed to in the land of his nativity, they gave the Native of India a very great deal better than he had ever seen or heard or dreamt of before. And this they did by keeping the graver cases in their own hands, by deciding the intermediate cases on reports accompanied by the record, and leaving only minor cases to the decision of Natives. Then they fostered education, and they imposed examinations on candidates for public service, and subsequently they enhanced the scope of those examinations; and as they gradually qualified the Native for the right exercise of power, they entrusted him with more and more of it, till now we have Natives on the High Court Benches. I confess it puzzles me, my Lord, to see how anyone can say that the tendency of legal administration in India has not been uniformly and without anomaly in the simple and single direction of giving the best form of justice possible in the circumstances to all classes, Briton and Native alike. With Britons we started at the top, because, from the paucity of their numbers, it was possible to do so. With the Natives this was impossible, because of their countless numbers, and their unmanagable areas, compared with the mere handful of Englishmen that have governed this vast Empire. So we started as near as we could to the same point, and, keeping it ever in view, progressed steadily as circumstances allowed, always towards the same end. The progress has ever been upwards and the principle uniform. There has been no anomaly whatever, and there is no anomaly now in the sense urged in favour of this Bill. But to turn round now and progress downwards, by placing the British subject under a tribunal of less competency to do him justice than he already enjoys, and we have readily at command, and to do that for no better reason than to remove a fancied anomaly, that would be an anomaly indeed.

"'The anomalous nature of present arrangements' is one of the reasons put forward for the introduction of this Bill. Rightly examined, the anomaly lies, not in Natives having less jurisdiction out of Presidency-towns than they have in them, but in their having jurisdiction over British subjects anywhere. The anomaly lies in having made an exception of Presidency-towns. The anomaly lies in having, in Presidency-towns, departed from the simple principle on which we had uniformly proceeded, of ever giving to both races the best justice practicable in the circumstances, in proceeding downwards instead of upwards. Remove that anomaly, and the position is logical and clear. But to set up that anomaly, and to base on it the claim to surround it with so many more anomalies that it shall cease to stand out singly as a marked anomaly, is to lead us blindly into a maze of anomalies in which we can never see our place to stop.

"If we must needs turn aside to such trifles as anomalies, and legislate on what I will take leave to call such very secondary grounds, then, to be consistent, we ought rather to wipe out this first great anomaly, have done with the whole side issue, and revert to first principles—logical principles. But there is no need for this, and all I wish to say on this point is, do not let us bring the existence of one anomaly forward as a reason for justifying the creation of more.

"I submit, my Lord, that if we want to avoid anomalous positions and preserve logical action in the future, there is no point at which we can so safely call a halt as where we now are. The hon'ble and learned mover of the Bill, in summing up the principles which have guided the framers of the Bill, says—and I cordially agree with him in the principle—'that, if this question is re-opened, it ought to be settled on a permanent and stable foundation.' I agree with him, because it is a corollary that, if it cannot be 'settled on a permanent and stable foundation,' it ought not to be re-opened. I submit, my Lord, that there is no landmark that can be called permanent about the position which the Bill takes up. It gives Natives the same jurisdiction over British subjects as Englishmen exercise over the same class of criminals, but that is not the same jurisdiction as is exercised over Natives; it is a modified quantity of jurisdiction amounting only to imprisonment for one year in the Mufassal; and, while the distinction in the quantity of punishment awardable to British subjects and Natives is maintained, it cannot be said that the Bill has brought us to the point

to which it is claimed to have brought us, that of impartiality, of the removal of race distinctions, and specially of finality. Sir Ashley Eden—though I doubt whether he used the words advisedly—certainly does use the words 'full powers', and that means the powers of life and death, of transportation for life, of imprisonment for 14 years. When the Native Judge in the Mufassal exercises such powers over the British subject, then we shall have removed 'race distinctions'; then we shall have arrived at impartiality and finality. But not till then. If the advocates of the Bill are not prepared to go as far as that, then admittedly they are not prepared to conduct us to what alone will justify the re-opening of this question, a settlement 'on a permanent and stable foundation'.

"Again, there is no element of finality that I can trace about the person selected for the exercise of jurisdiction over British subjects.

"There is no such self-evident cause as can stand as a landmark why others should not equally be selected. Indeed, for my part, I think a Deputy Magistrate who has been for years associated with Europeans, who has had a long magisterial training as a Tahsíldár Magistrate, who has his judgment mellowed by years, who, at the very outset of his career, had to pass qualifying examinations, and who has eventually been promoted for tried efficiency, is eminently better qualified to exercise such powers than a young man under 25, appointed without like examination, without trial, and without magisterial training or converse with British subjects; and such are the Native Civil Servants constituted under the statutory rules. If, then, the Native Deputy Magistrates, who are in hundreds all over the Presidencies, are obviously preferable to one of the classes named in the Bill, it follows that the settlement made by the Bill is not 'on a permanent and stable foundation.' I do not see how anyone, be he Native or European, can well think that this will be a final settlement. On the contrary, well nigh everyone outside these walls seems to look upon it as a mere beginning, as the opening of a door, as the introducing of a principle; and that is why there is so much agitation and anxiety about it—and that is why I, for one, my Lord, have indented so largely on your Lordship's patience. What I feel is, that this Bill will lead us into a hazy illogical position, with no distinct landmark to stop at; whereas, if we stand where we are, we have a defined line and a reason for it in Presidency-towns. If once we leave them and go half way down hill on the road to inferior justice for British subjects, we can never stop till we reach the bottom; and that bottom, where is it? It is deeper down even than our own Native Courts. It carries us into Native Courts in Foreign States. When once we have admitted that in our own Courts Natives are to try Britons, we can no longer insist, that in Foreign Courts Britons shall not equally be tried by Natives; and so we shall have created another anomaly that will have to be wiped out. We shall not have arrived at finality; we shall have to go on and rescind the Act, not so long ago enacted, by which Britons were exempted from Native jurisdiction in Foreign States.

"Once more, the same hand that sweeps away anomalies and partialities so as to lead us to a settlement that shall be final, introduces, by the same stroke of the pen, an incongruity and a piece of race partiality that, to my thinking, is more glaring than any which it removes. The effect of the amendment of section 443, by the elision of the words 'and an European British subject', is, not only to admit the Native to jurisdiction over British subjects, but by race distinction to bar the Briton, so that, if, for instance, the learned and hon'ble member to my right (Mr. Evans),—distinguished member though he is of the Calcutta Bar; if the Lord Chief Justice himself—were to elect to offer their services gratuitously for the trial of their countrymen in Calcutta or elsewhere in India, as they might do, and as so many do in England, they would find that, by the Bill we are asked to pass, they would be legally disqualified by reason of their race. In spite of their having the highest possible qualifications, in legal knowledge, in knowledge of the classes to be tried, to wit, their fellow countrymen, they would be legally barred by race distinction—barred solely because they are Britons, barred in the interests of the more effectual and impartial justice to be administered by Natives, stigmatised—if we are to use such a poor argument at all—stigmatised, in order that no stigma may be cast

on Natives; and this, we are told, is an element of finality. The barring of the Briton is to be final.

"But casting to the winds such very secondary ideas as legislating for a stigma, neither is it convenient in practical every-day work that every Briton, simply by reason of his being a Briton, should be barred from jurisdiction over Britons. At certain ports, far distant from the seat of any Magistrate, it is convenient that the master attendant should have jurisdiction in trifling cases over the seamen frequenting the port. That will not be possible when all Britons are legally disqualified by the proposed amendment of section 443.

"As the word 'stigma' has been forced upon us, and we are called on to consider it in the course of this discussion, let me take the opportunity, before parting with the word, to say that, in considering their *circumstantial* disqualifications for trying Britons, I cast no manner of stigma on Natives—no more, in fact, than if the Commander-in-Chief, there, were to stigmatise me as unfit to command a brigade, or even a company. And even if it were a sort of fancied stigma not to be allowed to try a class of cases you were not calculated to be exactly the best man to understand; even if it were a hardship equal to being tried by a man who was not calculated to understand your case, and the hardships on both sides being equal—which, of course, they are not and never can be,—we were cast on the horns of a dilemma and had to choose between them, there still need not be a moment's hesitation about the choice, for the persons affected by the one hardship are in thousands, if not tens of thousands; whereas those affected by the other fancied hardship may be numbered on the fingers. On the principle, therefore, of the greatest good of the greatest number, there should not be a moment's hesitation about abandoning a Bill that legislates for the few against the many.

"To sum up the above objections and apply them to the Bill. Not only does this Bill not 'contain in itself', as is claimed for it by the hon'ble and learned mover, 'the elements of stability and durability,' but it is pregnant with exactly the opposite elements, and, therefore, by the corollary of that very proposition, this question ought not to be re-opened.

"Looking once again at the reasons given for the re-opening of the question, I find it is commended to us on the ground that 'the time has come.'

"It is a set phrase, 'the time has come;' but there may be two views about its applicability. The time when we are doing all we can to induce English capital to come to this country seems scarcely the time to scare it away with inferior justice to the Englishman. Tell the English capitalist, who is prepared to send his sons and his money out to this country to be large employers of labour in coffee, tea, or cinchona estates; in gold, iron and other mines; in cotton or jute mills and so forth,—tell him that, if any one of the several hundred men, women, and children employed by his son lodges a complaint against him, 'the time has come' for his son to be tried by a Native,—I have a shrewd suspicion that he will have very different ideas about the time. He will not stay to ask what like the Native is, whether qualified or not. He will be apt, I think, to have strong opinions—some might call them prejudices—which we will have to put up with if we want him to bring his capital, for in that, at least, he is master of the situation. He will turn his back on us and send his sons and his capital elsewhere. And in the main he will be in the right; for, whether the planter gets justice or not at the hand of the Native Magistrate is rather a secondary consideration; the mere fact of his having, on some trifling charge, had to appear before and be tried by a Native Magistrate, of the same caste and family, perhaps, as one of his own writers or contractors, will so lower him to their own level in the eyes of his two or three hundred coolies, that he will not be able to command their respect any more. It can answer no useful end to judge of these things by European ideas; we must take them as we find them in this country; and such, I am convinced, would be the effect on the mind of the Indian coolies and their maistries. I am convinced of this; because I have moved not a little amongst planters and their labourers, and made it my duty to acquaint myself with their position, as much as with that of any

other farmers and their men; and now it is equally my duty to represent their interests here to the best of my poor ability; for their interests are the interests of the country, and it will be a dark day, indeed, for India if British energies, British intelligence, and British capital leave it in disgust. In a less degree, also, it will be an evil day for India if British energies, intelligence, and capital are discouraged from continuing to flow into it. It is a consideration of no small moment that the planters of Assam, of the Nilgiris, of the Wynaad and other places, with the lákhs of rupees that they bring into this country, should not be discouraged, which, I am convinced, they will be if this Bill passes. I specially allude to planters, because, settling, as they do, in isolated positions, each a lone man among a hundred, they are specially trusting in, and specially entitled to, the best justice we can give them, a style of justice that shall give them a feeling of security.

"One word more about the time having come from another point of view. If any of the above reasons for not subjecting Britons to Native jurisdiction have any weight, and had weight to sway the majority in 1872, surely they can only have *increasing* weight as the number of British subjects in the country increases; and in that sense the time, instead of having come, is, if anything, more remote than it was in 1872.

"When this matter was discussed in 1872, there were no Native gentlemen in this Council. Now there are four hon'ble members, and they are called upon to decide with us on the liberties of the British subject. The appeal to try this question by 'impartial justice' is addressed to them as well as to us; and there is a side of the case which specially addresses itself to them. They are better able, perhaps, than we are to appreciate the value to them of the special concessions made to them,—concessions made, some of them, in the very face of Western notions of justice,—concessions simultaneously denied to our own countrymen. I will touch with a word only, lest I should offend, such things as dancing girls, child marriage, child widowhood for life, plurality of wives, exemption on account of rank from appearance in Court, exemption on account of sex from appearance in Court—exemptions that we do not accord to our own Princes and our own ladies. Natives are the best judges of the value to them of these and like privileges, and, accordingly, they have been allowed, and rightly allowed, to be the judges: their voices have ever prevailed; their wishes have ever been scrupulously regarded, the only test applied being, will it do any positive injury to anyone else to concede these privileges? If it will not, then, by all means, let us liberally concede them. This has been the principle that has guided the concessions to Natives. Is it not fair to let the same equitable principle govern the grant of concessions to Europeans? Britons are the best judges of the value to them of the privilege of being tried by Britons, a privilege of which they seem to think so much; and if it will not do any positive injury to anyone else to let them have the privilege, then, by parity of treatment, by all means let them have the privilege. This view of the case will, probably, commend itself to the minds of Natives as an impartial one. Again, what would Natives think if, with the cry of justice to a class amounting to one half of India—the down-trodden females—in the interests of morality or any such like cry which an English philanthrophist might raise, we ran a tilt at their time-honoured institutions? I imagine they would say at once that it was legislating for an idea, was uncalled for and provocative. By parity of reasoning, the great mass of Englishmen look upon this attack on their privileges as equally uncalled for. If the attack is not justifiable in the one case, neither is it, I submit, in the other. Far, far be it from us to disturb the mind of the Asiatic with even the breath of a suspicion of any interference with his time-honoured valued privileges that do no positive injury to anyone else. By parity of treatment, far be it from him to deal by us otherwise than as we have dealt by him.

"While I have contended above that trial of Briton by Briton is only a natural sequence of the impartial effort to give to Briton and Native alike the best justice in our power to give, here, I have called it, for argument's sake alone, a privilege, and even as a privilege have shown, I think, that it has a

claim to be honoured; a claim, too, based strictly on the very test by which we are invited to try the Bill, that of impartiality.

"But what I have said above has been simply comment on the reasons given for introducing the Bill. The reasons for not going on with it, though few and simple, are, to my mind, more forcible.

"The first reason is of itself enough to throw out any Bill. It is not wanted. With the exception of a fanciful few, fidgetting impatiently after an idea, nobody wants the Bill. Nobody, European or Native, wants the Bill for any practical good that it will do him.

"On the other hand, there are very large numbers who, whether rightly or wrongly is a secondary matter here, are nevertheless, as a matter of fact, vehemently, aye vehemently, opposed to the Bill, and they come of a class, too, on whom all the best interests of India are immeasurably more dependent than they are on any other class. It is an obvious fact of which we cannot but take count, and their vehement feeling in the matter has led to the rousing and bringing prominently forward of the very feeling which the Bill was meant to lay—race antagonism—feeling given expression to in the Native Press, and thus disseminated, in much more violent and provocative language than Britons have indulged in. Now that it has been unmistakeably seen that the Bill has roused and keeps on intensifying the very feelings it was meant to allay, the Bill, if it is to be consistent with its aim, ought, I submit, to be withdrawn.

"That it is wanted for administrative convenience, as has been alleged, is a mere loose statement, which five minutes reference to the criminal statistics of the country would conclusively falsify. Theoretical positions may be set up, but so absolutely is fact against theory in this matter that I will not waste time on it.

"Though I have urged above that, in effect, the Bill does not give what it professes to give, I never meant to imply that, in theory and in the minds of the framers, it was not honestly, generously intended and expected that it should and would give it. Who would doubt it? Not doubting it, I venture to urge that the same soul of honourable, generous impartiality which lay behind the idea that prompted the Bill, should equally impel the advocates of this Bill to abandon it, now that it is unmistakeably clear that the Bill will not forward, but will positively thwart, their liberal intentions. I am not one of those who cannot admit honourable, high-minded intentions in those who think differently; nay, rather, I venture to make an appeal to those very intentions to which I pay all honour. If it is manly in an individual to admit a well-intentioned error, and he only rises in our estimation for the generosity of the admission—and none but the mean-spirited will impute it to weakness—may not a Government also, conscious of its stength, do the same with advantage, advantage both to its own credit and, what is of much more importance, to the interests of the great country committed to its charge? By the introduction of this Bill, the Government has made it abundantly plain that it entertains the most liberal intentions towards the Natives of India; that it has placed beyond a doubt; that surely will henceforth be accepted on all hands without a question; and that having been demonstrated, surely the Government is in the best possible position for saying in effect, if not in word, to the peoples of India—'Though we entertain these unquestionable sympathies, yet, in the course of the ventilation which this Bill has undergone, we have come to know that the passing of the Bill will not compass for you the advantages we had aimed at, but will, on the contrary, injure you seriously, by rousing a deep feeling of race antagonism in a class on which all your best interests are immeasurably dependent for justice, intelligence, capital, energy, progress in civilization, commerce, agriculture and all the material elements, of peace, plenty and health. Though in an infinitesimally minor degree, the Government itself also is not without indebtedness to the martial loyalty of the class that strengthens Her Majesty's forces in India by the supply of some ten thousand volunteers of all arms. We have accordingly resolved, in the best interests of the very people for whom this Bill was introduced, to abandon

it.' If the Government can do this of its own motion, it will, I submit, take a high stand indeed in the calmer judgment of posterity; and it can well afford, in its conscious strength, to think cheaply of any such petty charge as having yielded to clamour; for, in the eyes of the wise and generous, it will be judged to have yielded, not to clamour itself, but to the light cast by the expression of feeling elicited by the ventilation of the Bill, or, to speak more correctly, not to have yielded a jot, but adhered, under the new light thrown, to its own previously expressed intent of allaying race antagonisms.

"If the Government can do this, not in Council here, but of its own motion, then a thousand times *bis dat qui cito dat.* The sooner it does it, I submit, the better. If the Bill is understood to be only postponed till November, then the deplorable—the very deplorable—feelings that have been roused on both sides will only smoulder deeper and wider till the November discussion fans them again into flame; and then, if the Bill is carried by the Government, voting as a Cabinet, and not individually, as on the discussion of this point in 1872, the feeling will not pass away with the passing of the Bill, but will sullenly live for years to come and burst out afresh whenever a case in point arises. I hardly like to dwell on the depth and growing intensity and breadth of the feeling of race antagonism that has been raised. I only feel bound to touch the warning note, that it is a matter worthy of the gravest consideration of Government.

"The Government has only very recently taken additional steps for the better ventilation of Bills, with the avowed intention of availing themselves, in the interests of the country, of the better light shed by such increased ventilation. Here, then, in the deep and widespread agitation and vehement expression of strong feelings, is the very light they have courted. Will they cast aside the very light they have courted on the very first exhibition of it? Will they not rather recognise that it is the very light they courted, and, in consonance with their own previously expressed policy, rather use it in the best interests of the country? Surely they are in an advantageous position for doing so without risk of being misunderstood.

"Both in respect of having unmistakeably demonstrated their liberal intentions towards Natives, and in respect of having expressed a desire, for the public good, to obtain and be guided by the views of the people legislated for, and also in respect of both acts being quite recent, the Government are surely in the best possible position for promptly withdrawing this Bill of their own motion. Indeed, if they do not, they will even seem to stultify their own professions.

"Yet another course is open to the Government, a medium course that will probably satisfy the moderate minded on both sides, giving the Native the coveted brevet rank, and still practically retaining to the Briton his freedom,—a course also that will lead us into no illogical positions, and meet all fancied administrative difficulties—that of making the jurisdiction proposed to be given to Natives permissive only on the Briton positively waiving his right to be tried by a Briton. But in such case it would have to appear on the first summons that the Briton had the right, and he would have to endorse his election to appear or not to appear before a Native, and the jurisdiction should not be extended beyond the cases now contemplated. But this is only suggested as a compromise not without dangers; and the much more satisfactory and manly course would be to abandon the Bill.

"Having taken upon me to tender this my humble opinion of the best course to be pursued with this Bill, I wish to submit that it is in no spirit of factious opposition to the Government; indeed, I knew not till very recently that the Bill was to be regarded as a Cabinet measure, if indeed it is to be so regarded, as the hon'ble Law Member tells us to-day, and herein I must plead my newness to the rules of this Council. I thought it was put forward as an important measure on which the Government were anxious, as in 1872, to obtain the unfettered opinions of everyone present; and if I have erred in too candidly submitting mine, I trust it may be

recognised that I have been influenced by no spirit of factious opposition; far from it. I have said what I have said only in true loyalty to the Government. Being called here, I felt bound, on a point of such vital interest to the country, to place my views, for whatever they might be worth, at the service of Government. If they were worth nothing, the labour was mine only, and they could be cast aside. If they were worth anything, and served by a feather's weight even to influence the decision of Government, then I should rejoice indeed to have spoken freely, as I feel earnestly, in behalf of what I humbly believe to be the best interests of the country in which I have spent my life, and which I have as truly at heart as the liberal-minded framers of the Bill. In this light, and aiming in effect at the same final ends as do the framers of the Bill, I shall trust, though a seeming opponent, to be eventually recognised as a true co-adjutor."

The Hon'ble MR. REYNOLDS said:—"My Lord, I shall not detain the Council with more than a very few remarks, but I wish to take this opportunity of expressing my cordial approval of the principle of this Bill. That principle is clearly explained in the Statement of Objects and Reasons, and has been further explained to-day by the hon'ble member in charge of the Bill. It is simply this, to do away with all judicial disqualifications which are based upon mere distinctions of race. What we have to look at in a Judge or a Magistrate is, not his colour, but his character; not his pedigree, but his ability and his integrity. I was a member of the Select Committee last year on the Bill to amend the Code of Criminal Procedure. The question of the exceptional position of European British subjects under the criminal law was raised in the course of the discussion upon that Bill; but it was brought before the Council in a form, and at a stage of the proceedings, which precluded us from taking it into consideration, except at the risk of deferring the passing of the Bill to another session, and thus delaying the introduction of those useful reforms which have now become law in the amended Code of Criminal Procedure. But a promise was then given by the Government that the matter should not be lost sight of; and I presume that the Government had this promise in mind when it was determined to introduce the present Bill.

"I not only accept the principle of the Bill, but I entirely approve of the system on which it is proposed to carry that principle into effect. This is a Bill for levelling up, not for levelling down. It does not take away from Englishmen the cherished right of being tried by their peers, but it declares that a Magistrate shall not be precluded from being deemed the peer of an Englishman merely because he happens to be a Native. In the criticisms which have lately been poured out upon the Bill, it has been confidently asserted that this is a measure for removing a mere sentimental grievance; for dealing with a difficulty which may arise at some future time, but which has not yet assumed a practical shape. The authors of those criticisms must have been imperfectly acquainted with the facts of the case. In August last, Mr. Romesh Chunder Dutt, a Covenanted Civil Servant, was appointed to officiate as Magistrate and Collector of Balasore, and he has now been again appointed to officiate as Magistrate and Collector of Bákirganj. Mr. Dutt is an officer of some distinction in the service to which I have the honour to belong. He stood second in his year at the final examination in England; he is a barrister-at-law; he has filled subordinate appointments with credit; and he has written ably and successfully on economic questions in Bengal. It is something more than a sentimental grievance that such a man, who is thought competent to hold the chief executive charge of a district, should remain under a legal disqualification for exercising the powers of a Justice of the Peace. Such a disqualification hampers the Government in the selection of its officers, and weakens the hands of justice, and I should rejoice to see it removed from the Statute-book.

"If, therefore, the motion before us to-day, instead of being merely a motion for the publication of papers, had been a motion to refer the Bill to a Select Committee, I should have had no hesitation in voting in favour of it. I do not say that I am entirely satisfied with the provisions of the Bill. I feel consi-

derable doubt whether the first section has not been too widely drawn, and whether it would not have been better to restrict the operation of the measure to officers, whether Covenanted Civilians or not, who might be actually appointed to be Sessions Judges or District Magistrates. But points of this kind do not touch the principle of the Bill, and the Select Committee would be the proper place for their consideration.

"It is, of course, a further question whether, in view of the determined opposition which this measure has encountered, it would be prudent in the Government to make any further attempt to pass it into law. It appears to me that this is primarily a question for the Executive, but I imagine it is quite within the competence of this Council, as a legislative body, to say that, though the abstract principles of a measure may be equitable and right, it would be impolitic and inopportune to make them part of the law of the land. That, however, is not a question which we are called upon to consider to-day. If the present ferment should subside; if the passions which have been aroused, and the misrepresentations which have been made, should disappear before a calm consideration of what the Government really proposes to do, and what the effects of its legislation are likely to be, I should gladly give my vote, when the time comes, for passing into law a measure based upon the principle of this Bill. But if, on the other hand, postponement and reflection should intensify the feeling which undoubtedly exists to-day; if it should be made clear that the deliberate verdict of the European community in India is opposed to any such legislation as this; if the appeal to Philip sober, which is now to be made, should be dismissed on the merits of the case,—the Government would undoubtedly incur a serious responsibility by asking this Council to pass the Bill."

The Hon'ble DURGÁ CHARAN LÁHÁ said:—"My Lord, this Bill, in my humble opinion, is a move in the right direction, and I deeply regret the feeling which it has evoked.

"It seems to me absurd to suppose that the Native officers who were deemed qualified to hold the responsible post of Magistrate and Judge, and to sit in judgment upon millions without distinction of rank, were not competent to exercise jurisdiction over European British subjects in criminal matters.

"As to race prejudice, which has been already referred to, I for one think that it has little or no existence in fact. With the progress of English education and increased intercourse with Europeans, I am glad to say this feeling has no place in the minds of educated Natives, and that any apprehension as to failure of justice in their hands appears to me wholly groundless.

"What is this change, after all, that the Government propose to introduce? It is to give the same powers to a few selected Native Civilians that Englishmen holding the same position already possess. These Native gentlemen have had to pass the same examinations, and are considered by Government competent to perform the same executive duties, as their brother Civilians. If we refuse to put them on an equality as regards judicial powers, we shall, I maintain, be casting an unnecessary slur upon them, and lower them in the eyes of the people whom they have been deputed to rule. Much better, I say, not have introduced them into the service at all, than, once having done so, impugn their probity by saying 'You shall perform all the duties belonging to the office of an ordinary Civilian, except that of having judicial powers in criminal cases over any European.' We must remember that it is only proposed to invest those Native Civilians who have proved themselves to be of unexceptionable probity with the power in question, and, looking at the safeguards that are to be maintained against any possible failure of justice, can any Englishman honestly say that he is afraid that his countrymen will run any greater risk of being unfairly treated at the instance of a Native Judge than they will at that of a fellow-countryman? A Native Civilian would naturally be always most careful and anxious to see that no injustice should happen in the case of a European, as he would know that he would be accused of race hatred or incompetence should any fault be found with his judgment.

"It has been said that the passing of the amendment will prevent the introduction of British capital and enterprise into this country. I cannot bring myself to believe that anything of the kind will ever happen. The same argument was employed when Act XI of 1836, bringing our European fellow-subjects within the jurisdiction of the Mufassal Civil Courts of the East India Company, was passed, and we now see how the predictions then made have been wholly falsified.

"The Government of this country has, I am aware, my Lord, been of a most liberal and lenient description for many years past; and all educated Natives are, I am sure, deeply sensible of the great debt of gratitude they owe to the English nation for the conciliatory spirit which has been shown by the rulers of this country, when they might, with impunity, have acted in so very different a manner. The aim and object of the English Government has, I believe, been to make the people of this great Empire loyal and contented subjects of our Most Gracious Queen; and this object has hitherto been gained by the wise policy pursued by your Lordship and your predecessors, of treating all Her Majesty's subjects, whether Natives of this country or Europeans, as far as has been possible, with equality."

The Hon'ble SAYYAD AHMAD KHÁN said:—"My Lord, as this is probably the only opportunity which I shall have of expressing my views on this important measure, I am anxious to offer a few observations. I am aware, my Lord, that this Bill has been the subject of much discussion by the public Press, and has given rise to excited agitation among the non-official section of the European and Eurasian community, who feel that their liberties are imperiled by the proposed law. I have not the smallest wish to assign unworthy motives to the agitation; and far be it from me to say that the views which that agitation represents should not be duly considered by the legislature. Never has the Indian legislature been more anxious to consult the views and feelings of the public regarding legislative measures than the present Government of India. With every wish that the views put forward by the European and Eurasian community should be duly considered, I confess, my Lord, I cannot help feeling deep and sincere regret at the attitude which the agitation against this Bill has adopted. Vehement and somewhat unmeasured language has been used by the agitators against my countrymen. I sincerely deplore this circumstance, as much for the sake of the leaders of the agitation themselves as for the sake of the feelings of my own countrymen. And here, my Lord, permit me to express a sincere hope that my countrymen will in no part of India follow the example of those who think that the vehemence of public demonstrations is the best way of submitting arguments and claims for the consideration of the legislature. The people of India, strongly as they feel in favour of the justice, the wisdom and the expediency of this Bill, need no demonstration in favour of the measure; and, if I know the views of the leaders of Native society, I cannot be far wrong in prophesying that the people of India will not resort to any public demonstrations in support of this Bill. They are content to leave the measure to be decided upon its own merits. As a Native of India myself, with every wish for the success of this Bill, I hope my countrymen will adhere to their present determination to watch the progress of this Bill with calm and respectful silence.

"My Lord, it is not unintelligible to me that the non-official European and Eurasian community, separated as they are by the distance of time and space from those influences which secure the progress of political thought in England, should in the circumstances of India attach exaggerated importance to distinctions of race and creed; that they should upon such occasions emphasise the fact of their belonging to the ruling race; that they should claim for themselves especial provisions in the general law of the land. My Lord, all this is intelligible to me; but, at the same time, I cannot help feeling that a good deal of the opposition offered to the Bill arises from inadequate information in regard to the history of Indian legislation in matters of a similar nature, and from a misapprehension of the small change which this Bill proposes to make in the existing law. My Lord, I do not claim to be an authority on questions of constitu-

tional law; but I may safely doubt the legal accuracy of the contention, which has been put forward elsewhere against this Bill, that the European and Eurasian subjects of the Queen Empress in India have any such constitutional rights as would place them above the jurisdiction of the Indian legislature. As an humble member of the Indian legislature myself, I would repudiate any such limitation. We derive our powers from the great Parliament of England; and, so long as we do not exceed those powers, it seems to me erroneous to doubt the legislative authority of this Council in all matters connected with India. History repeats itself, and we have in the present agitation against this Bill a repetition of the arguments and sentiments employed by the alarmists of many years ago, when Native Judges presiding in the Courts of the East India Company were empowered to try civil suits to which Europeans and Eurasians were parties. My Lord, I hope I may, without fear of contradiction, say that the exercise of civil jurisdiction by Native Judges in cases to which Europeans are parties has not given rise to any injustice, not even to complaint on the score of national differences. The truth is, that the fears of the alarmists of those days were unfounded, and their prophecies were bound to prove false. At this moment, throughout British India, Native Judges exercise civil jurisdiction over Europeans in a manner which certainly is not open to the charge of being influenced by race distinctions. But then, my Lord, it is sometimes urged that civil jurisdiction is vastly different to criminal jurisdiction; that the former affects property only, but the latter affects personal character and liberty; and that, whilst the European and Eurasian community may be willing to subject themselves to the civil jurisdiction of Native Judges, it does not follow that they should do the same in criminal matters. My Lord, I confess I am unable to see the reason upon which such distinction is based. The decrees of Civil Courts can reduce a man from opulence to poverty, and there are some branches of civil jurisdiction which not only relate to personal relations, but include the power of personal arrest, and, in the interests of justice, authorize a procedure similar to that provided for Criminal Courts. The process of arriving at conclusions as to the facts of civil cases is much the same as in criminal cases. The same law of evidence in India regulates the investigation of truth in Civil and Criminal Courts. The judgments of Civil Courts may stain the reputation and ruin the character of parties nearly as much as sentences passed by Criminal Courts; and it seems to me that there is no substantial foundation for drawing a distinction in principle between judicial powers of the two classes of Courts, or for attaching greater importance to one class of jurisdiction than to the other. If probity, justice and absence of race bias are found among Native Judges in civil matters, it is difficult to perceive why the same qualities should not mark their administration of criminal justice in cases in which Europeans and Eurasians are concerned. As I understand the existing law, all Native Magistrates already exercise jurisdiction in criminal matters in cases in which Europeans are complainants and seek redress from the Courts as injured parties. I have never yet heard that European British subjects have any objection to resort to Native Magistrates for redress; indeed, they do so without any hesitation. If this is so, there seems no reason why the same confidence should not be shown to those tribunals in cases in which complaints are brought against European British subjects. Counter-charges are not uncommon in criminal cases. Magistrates competent to give redress ought to be competent also to award punishment; and it seems unreasonable and unfair for any section of the community to say 'We will go to Native Magistrates for redress, but we will not submit to be tried by them.' Indeed, my Lord, it is hardly necessary to say that, even under the existing law, Natives of India exercise a good deal of criminal jurisdiction over European British subjects. Even outside the Presidency-towns, I believe it is not a rare occurrence that European British subjects, appearing as defendants before Native Magistrates, waive the exceptional privilege accorded by the existing law. There is no judicial disqualification based on race distinction in the powers of the Native Judges of the High Courts and Magistrates in Presidency-towns; and I need have no fear of contradiction in saying that Native officers, when entrusted with criminal jurisdiction over European British subjects, have performed their duty with honesty and effi-

ciency, and without any bias arising from distinctions of race or creed. Indeed, my Lord, in educated minds, employed in the solemn and sacred duty of administering justice, the claims of humanity at large to the protection of law, and the dictates of conscience, leave no room for any other considerations. In the neighbouring island of Ceylon, which forms a part of the vast Empire of Britain, I believe I am rightly informed, Native Magistrates and Judges exercise criminal jurisdiction over European British subjects. Judicial disqualifications based on race distinctions are unknown in that country. Yet British capital and British commercial enterprise, far from being driven from that island, have had considerable scope in that colony. The interest of coffee-planters in Ceylon is, so far as I know, in no sense inferior to the interest of indigo-planters in Bengal; and the people of Ceylon are in no sense less Asiatic than the people of India. Nor would their staunchest patriot in Ceylon claim for his countrymen a higher position in the scale of civilisation than he would concede to the people of India. Yet the existing law of British India in regard to criminal jurisdiction over European British subjects is behind the law of Ceylon, and, my Lord, I do not think it unreasonable for the people of India to feel that the time has arrived when the necessity of improving the law has become urgent.

"So far, my Lord, I have endeavoured to show that the proposed law is no innovation in principle, that the fears of the opponents of this measure are exaggerated and ill-founded, and that the example of Ceylon furnishes a practical illustration of the argument that the removal of judicial disqualifications, based entirely on race distinctions, will not be attended by any injury to the sacred cause of justice. And, my Lord, I may here repeat that the scope of the Bill seems to have been greatly misunderstood by the promoters of the agitation against it. As I understand the Bill, it does not propose to invest every Native Magistrate with power to try European British subjects. It is only in the case of those Natives of India whose recognised probity and ability have enabled them to achieve positions in the Judicial Service equal in rank to English officers of the higher order that the Bill proposes to remove judicial disqualifications based on race distinctions. The number of such Native officers is very limited; and the Bill cannot, therefore, in any reasonable sense, be regarded as precipitate or calculated to cause any serious practical change in the present machinery of the administration of justice.

"But, my Lord, putting aside these considerations, it seems to me that there is much fallacy in the argument which attaches so much significance to race distinctions. What the people obey in countries blessed with a civilised Government is, not the authority of individuals, but the mandates of the law. So long as the law is just, impartial and humane; so long as the proper administration of that law can be secured, the nationality of those who carry out the law should be of no consequence even to sentimentalists. What requires respect, submission and obedience is the authority of the law, and not that of individuals, and even those who regard the people of India as not entitled to equality with themselves might, if they only consider the question calmly, feel that Native Magistrates are only the servants of the State, charged with the duty of carrying out the behests of the law. It is the duty of the State to provide for the proper administration of the law. To secure this object, the State has to choose the best available agency, and it seems a somewhat untenable and unjust proposition for any subjects of the State to insist that, in the choice of officers, Government shall confine itself to any particular race or section of the community. The whole question raised by the Bill, in my humble opinion, practically amounts to what I have just said. It is a matter the principle of which requires no new decision. The question was discussed and it was decided, and decided nobly, when the magnanimity and justice of England accorded to the people of India rights of employment in the service of the State on the same footing as Englishmen themselves. That noble decision has, in recent years, received practical effect, and administrative expediency requires the moderate change which this Bill proposes.

"But, my Lord, this Bill has in its favour considerations of a higher order than even administrative expediency. I allude to those noble principles of freedom, justice and humanity which have their home nowhere as much as in the bosoms of the nation which first came forward to release the slave from his thraldom; which first announced to the people of India that, in matters of constitutional rights, distinctions of race and creed should have no place in the eye of the law. Never in the history of the world has a nation been called upon to act up to its principles more than the British in India. The removal of disabilities under which certain sections of the community laboured in England in regard to constitutional rights sinks almost into insignificance in comparison to what England has already done in India. The history of Indian legislation is the history of steady progress, of well-considered reforms, of a gradual and cautious development of the noble principle that between British subjects the distinctions of race, colour, or creed shall make no difference in legal rights; that whilst, on the one hand, British rule enforces submission, and expects loyalty and devotion from the people of India, on the other hand, it accords to them rights and privileges of equality with the dominant race. My Lord, I am convinced that it is on account of these noble principles, remarkable alike for their justice and for their wisdom, that the British rule has founded itself upon the hearts and affections of the people—a foundation far more firm than any which the military achievements of ancient conquerors could furnish for the domination of one race over another. History teaches the lesson that nothing is more destructive to the prosperity of a country than that race distinctions should be maintained between the rulers and the ruled. No one can be more anxious than myself that friendly feelings should grow even more than they have already done between the English nation and the Natives of India. Providence has thrown the two races together in a political and, I hope I may also say, social union, which will grow firmer and closer as time goes on. My Lord, if I believed that the legislative measure incorporated in the Bill will prove destructive to the growth of friendly feelings between the two races, I should have deprecated the introduction of the measure. But I can take no such view. I am strongly convinced that, so long as race distinctions find a place in the general law of the land, so long will there exist obstacles to the growth of true friendly feelings between two races. The social amenities of life arise from political equality, from living under the same laws, from being subject to the same tribunals. The caste system in India would, perhaps, never have held its ground so long, if the legislators of old had not framed one law for the Bráhman and another for the Súdra. Whatever the exigencies of former times may have been, I hope, my Lord, that a century and a half of British rule has brought us to that stage of civilisation when there is every reason for minimising race distinctions, at least in the general law of the land. My Lord, I, for one, am firmly convinced that the time has come when the entire population of India, be they Hindú or Muhammadan, European or Eurasian, must begin to feel that they are fellow-subjects; that between their political rights or constitutional status no difference exists in the eye of the law; that their claims to protection under the British rule in India lie, not in their nationalities or their creeds, but in the great privilege, common to all—the privilege of being loyal subjects of the august Sovereign whose reign has brought peace and prosperity to India, and made it a place suitable for commercial enterprise, and for the pursuit of the arts and sciences of civilisation. My Lord, as this is probably the last occasion on which I shall ever address the Legislative Council of India, I cannot conclude my observations without saying that your Lordship's administration is to be heartily congratulated upon having brought forward a measure which, I am convinced, will go a great way to remove invidious race distinctions, and ultimately promote good feeling, mutual respect and sympathy between the rulers and the ruled in this land of many races and many creeds."

The Hon'ble MR. HUNTER said:—My Lord, after very careful consideration, I feel constrained to support this measure. In doing so, however, I hope that I shall not disregard either the expressions of disapproval which have

reached us from without, or the arguments which have been so skilfully arrayed against the Bill in Council to-day. I agree with the opponents of the measure, that there is a body of personal law peculiar to European British subjects in this country—a law which accords to them highly-prized exemptions and privileges. I agree that there is likewise a personal law peculiar to certain classes of our Native subjects—a law which is equally valued by them. I agree that, as we have respected the exemptions and privileges secured to our Native subjects by their personal law, so we are bound to respect the exemptions and privileges enjoyed by European British subjects under their personal law. I am prepared to go further, and to maintain that, in the early days of English rule in India, the personal laws of the various classes formed the main body of law administered in our Courts. The history of Anglo-Indian legislation is the history of the absorption of these personal laws peculiar to classes into a common system of law applicable to all. By this process of absorption, the personal law of each class has been gradually but steadily curtailed. It is this process of absorption which supplied what the Marquis of Wellesley termed the "active principle of continual revision" that struck him as the salient feature of the Bengal Regulations in 1805. During the last 80 years the process has gone on at an accelerated pace, until the special privileges now left to the Natives of this country, and the peculiar exemptions still claimed by European British subjects residing within it, are a mere fragment of the privileges and exemptions which those classes severally enjoyed when Lord Wellesley delivered his Discourse. At each important stage in the process, there has been an outcry from the class whose personal law it has curtailed. Indeed, no class of men can be expected to part with their special privileges without opposition. It seems to me that a Government is bound to listen with great respect and sympathy to such an opposition, and that it ought to refrain from such changes, except when they are clearly demanded by the common weal. But when such a change becomes really necessary for the better administration of the country, then I hold that Government is bound to make it; however much it may regret that it has to purchase a benefit for the whole body of its subjects, at the cost of the natural resentment of a section of them.

The curtailment of class distinctions which this Bill will effect is no isolated act. It forms one of a long series of measures absolutely inevitable in moulding the laws of the various races, from which our administration of justice in India started, into a common body of law applicable to them all. Permit me for a moment to remind the Council how this process has affected our Hindú and Muhammadan subjects. The Charter of 1753 expressly exempted suits between Natives from the jurisdiction of the English tribunals, then styled the Mayor's Courts.* The Governor General guaranteed in 1772 their own laws to the Natives, and provided that Maulvís and Bráhmans should attend the Courts to expound those laws † By the Statute‡ of 1781, the British Parliament secured the Hindús and Muhammadans, not only in their law of inheritance, succession, &c., but also in "all matters of contract and dealing between party and party." The same Statute guaranteed to them their domestic law of the *patria potestas*, and the punitive sanctions of caste. It provided that no act done, and therefore no penalty inflicted, in consequence of caste rules should "be held and adjudged a crime, although the same may not be justifiable by the laws of England."

I shall not detain the Council by a further enumeration of the guarantees granted to the Natives of this country, or of the legislative process by which those guarantees were one by one infringed. The Natives still retain a large portion of their domestic law and certain privileges, such as the exemption of women of position from appearing personally in Court. But in the ordinary affairs of business they have been brought under English-made law. The

* Charter of George II granted in 1753.

† Plan for the administration by Warren Hastings, 1772, Rule 23, afterwards incorporated in the first Bengal Regulation, dated 17th April, 1780.

‡ 21 Geo. III, c. 70.

Maulví or Bráhman assessor has no longer a place in our Courts. For Native law and usage in dealings "between party and party," we have imposed the Code of Civil Procedure and the Contract Act. We have weakened the *patria potestas* by curtailing the punitive powers of the head of the family, especially in regard to the female members. We have undermined the sanctions of caste by treating as offences the graver penalties inflicted for breaches of its rules, notwithstanding our express pledge to the contrary. We accepted the system of the Muhammadan criminal law; we have substituted for it a system of criminal law of our own. Special classes have had their ancient privileges curtailed in a special degree. The Hindú law accorded to the Bráhmans a status which enabled them to exercise spiritual powers, yielding lucrative temporal results. We no longer permit the employment of these spiritual powers for compulsory purposes. If a Bráhman erected a *kurh*, and some credulous old woman killed herself thereon, our regulation law tried him for murder. If he enforces a debt, or extracts a charity, by fasting outside a man's door, the English Magistrate locks him up in jail. We have deprived the sanctity of Brahmanhood of much of its pecuniary value, and subjected its spiritual terrors to the Penal Code.

In all this the Government has done wisely and well. In doing so, however, it has had again and again to encounter a clamorous but quite natural opposition from those whose ancient privileges or personal law it curtailed. I shall not cite instances where the gain to the community at large was beyond question, but one in which the necessity for a change seemed doubtful to many. There are no branches of the Native law more solemnly guaranteed to the Hindús than those which deal with marriage and inheritance; and there is no principle more clearly established than the deprivation of rights to family property in the case of a Hindú becoming a convert to another religion. Yet a series of *Lex Loci* Acts, initiated in 1832, and ending within our own experience, have repeatedly interfered with the most cherished feelings of the Natives in these matters. In each case since 1842, the Natives have struggled against the change. With them, inheritance is not a mere question of gain or loss in this world, but involves the safety of the souls of their ancestors, and their own happiness or misery in the future life. They have pleaded Parliamentary guarantees, the solemn declarations of the Indian Legislature, the established usage of a century of British rule. With one temporary exception, they have pleaded in vain.

The personal law and exemptions peculiar to European British subjects in India have undergone scarcely less important curtailments. The legal status of the non-official Englishman in India commences, for practical purposes, with the Charter of 1813.* During the preceding half century, the English non-official in rural Bengal had passed through various stages, as an interloper, a licensed adventurer, a subordinate agent of the East India Company, and a partner, recognised or unrecognised, of its servants in their private trade. He might execute a bond making himself amenable to the Company's Civil Courts, and after 1787 he had to do so before he was permitted to reside in the interior. In criminal matters he was subject only to the Supreme Court and Her Majesty's Justices of the Peace in Calcutta. He practically, therefore, remained outside the Company's system of administration, as an unmalleable unit of sturdy independence and growing importance in whatever district he settled, disliked and often unfairly treated, but very difficult to reckon with. In matters of criminal jurisdiction he was under the surveillance of the rural police instead of being amenable to the rural Courts. As late as 1817 a Regulation was passed requiring the police to submit yearly to the Magistrate of the district a list of all Europeans residing within it. Indeed, until the Government passed to the Crown, each police-inspector had to report the arrival of every non-official European who came within his circle.

The Charter of 1813 threw open the Indian trade to private enterprise, and at the same time created a jurisdiction over the Europeans

* 53 Geo. III, c. 155.

who might embark in the business. It provided that every British subject living at a distance of more than ten miles from the Presidencies should be amenable to the Civil Courts of the East India Company in like manner as Natives of India. It also empowered the Governor General to appoint Justices of the Peace from among its Covenanted Servants, or other British residents, with petty criminal jurisdiction over British subjects, not exceeding a fine of Rs. 500, or in default two months' imprisonment. As the number of Europeans increased in India, the powers of the Justices of the Peace were extended by a Statute of George IV.* All powers, whether civil or criminal, were exercised only by Europeans, because at that time the Natives of India had been excluded from the higher judicial offices which they held in the early days of the Company, and had not yet been incorporated as a branch of its Uncovenanted Civil Service. But when the Company withdrew from its trade after 1813, it set itself to the task of improving its rural government. By a series of measures between 1821 and 1836, it increased the powers of its Native Judges, and admitted the Natives of India to a large share of the civil judicial administration. It followed that if Natives were to do the staple work of civil justice, they must exercise jurisdiction over the whole body of inhabitants within their district. By a series of laws in 1836, 1839 and 1843, their jurisdiction was therefore extended over European British subjects. It was enacted in comprehensive terms that, thenceforth, no person should, by reason of place of birth, or by reason of descent, be in any civil proceeding exempted from the jurisdiction of any of the Company's Civil Courts.

The European community bitterly resented these laws, and opposed every effort to bring them under the jurisdiction of the country tribunals, as distinguished from the Supreme Court in Calcutta. The most important of them, they stigmatised as the Black Act. "The Black Act," writes an eye-witness, Mr. William Tayler, an eye-witness not at all likely to favour Bengal officialism, "was the cause of an agitation which may fairly be said to have convulsed Indian society for a time. Several barristers took the lead; public meetings were called; scurrilous articles filled the columns of the daily journals. One impassioned orator hinted that Mr. Macaulay [the Legal Member of Council] ought to be lynched at the very least." My Lord, it marks the difference between Englishmen in India at that time and at the present day, that although their feelings on questions of class privilege remain equally strong, the articles in the public journals are no longer "scurrilous"; their public meetings cannot fairly be described, in Mr. Tayler's words, as "fierce and uproarious"; and their resistance is not now confined to Calcutta, but, with the extension of British enterprise, is diffused over many districts. The jurisdiction of the Company's Civil Courts and of the Native Civil Judges, which Englishmen so loudly opposed fifty years ago, has done more than any other series of administrative measures to protect British capital, and to render British enterprise possible in rural India.

During the same fifty years, the special privileges of European British subjects in matters of criminal jurisdiction have also been curtailed. Perhaps the most important attempt under the Company in this direction was that of Lord Dalhousie's Government. In 1849, it prepared a draft Act declaring that all British subjects, resident outside the towns of Calcutta, Madras and Bombay, should be thenceforth amenable to the Magistrates and Criminal Courts of the East India Company; save, only, that no such Magistrate or Court should have the power to sentence any of Her Majesty's natural-born subjects to death.† It made no proviso as to the Magistrate being a Justice of the Peace. On the contrary, it expressly stated that "the word Magistrate, as used in this Act, shall be understood to mean every officer, however styled, who has power to exercise any or all of the powers of a Magistrate."‡ I need

* 9 Geo. IV, c. 74, sections 92, 97, 113, 121, 124.

† Draft Act read for the first time in Council on the 26th October, 1849, section 1.

‡ *Idem*, section 6.

hardly point out that the Bill now before the Council has a very much narrower scope. Lord Dalhousie approved of the proposed extension of the criminal jurisdiction over European British subjects, but thought that the measure should be postponed till the amending of the criminal law was effected by the Penal Code. His view prevailed. Shortly after the country passed to the Crown, the Penal Code became law, and the question of jurisdiction could be considered on its own merits. This was last done on the revision of the Code of Criminal Procedure in 1872. Before that year, the Natives of India had been admitted, by open competition in England, into the Covenanted Civil Service; and, in the natural course, would rise, as Magistrates and Judges, to the highest posts in the administration of criminal justice in their respective districts. The question which had to be decided in 1836, with regard to granting civil jurisdiction over European British subjects, came up for consideration in 1872 with regard to criminal jurisdiction. The Legislature, in 1872, determined to give a substantial jurisdiction over European British subjects to full-power Magistrates, being Justices of the Peace, and to Sessions Judges, provided that such Magistrates and Sessions Judges outside the Presidency-towns should themselves be European British subjects. By a narrow majority, the Legislature abstained from giving these powers to the Native members of the Covenanted Civil Service. How narrow the majority was, may be estimated from the circumstance that, if a single one of its members had voted the other way, the minority would by the President's casting vôte have become the majority.

My Lord, I think that the Legislature decided wisely in 1872; but that we should decide wrongly if, in 1882, we supported its decision. The circumstances of the country at large, and of the special class of public servants to whom jurisdiction will be given, have altered during the ten years. The administrative necessity for the change, which was then remote, has now arrived, and will soon become urgent. Even before 1872, criminal jurisdiction over British subjects had been given to Native Magistrates in Calcutta, and both Hindú and Muhammadan gentlemen have exercised these powers in the Calcutta Courts. But it was not considered safe to entrust the same powers to Native Magistrates in the districts, because it was feared that public opinion, which would check any miscarriage of justice in Calcutta, might not act with equal force upon District Magistrates. I think that this was a good argument in 1872. But new enterprises have since then brought an influx of Englishmen into the interior, and created an amount of independent English opinion in the districts which could not have been anticipated in 1872. I, for one, read with pleasure the telegrams which have poured into *The Englishman* during the past month, from every part of Bengal where Englishmen reside. Those telegrams show that our non-official countrymen are strongly opposed to the measure which I advocate. But they also show that Englishmen in the interior have now the means of expressing the public opinion of their class with such promptitude and with such force as to constitute the strongest possible guarantee against the abuse of magisterial powers, whether vested in European or in Native hands. Not only is English public opinion in the districts stronger, but English public opinion in Calcutta acts much more directly upon the District Magistrates. Since 1872, the length of railways open in India has increased from a little over 5,000 to close on 10,000 miles. The number of private telegrams sent has increased from 600,000 to 1,337,526. The number of post-offices and letter-boxes has, during the same period, multiplied from under 5,000 to more than 11,000; and the number of letters, newspapers, &c., from 89 millions to 158 millions. Districts formerly isolated have now speedy and constant communication with the capital. Nor is it too much to say that English public opinion in the remote province of Assam can now be brought to bear as powerfully and as immediately upon the central Government, as the English public opinion of Calcutta could twenty years ago.

The circumstances of the special class of public servants, to whom it is proposed to give jurisdiction, have also changed. In 1872, the Native Covenanted Civilians appointed by open competition in England were untried men, who had yet to prove their fitness for the offices entrusted to them. They have,

during the past ten years, abundantly proved it. They have established their reputation as painstaking, impartial officers, and in a special manner they have shown their capacity for sound judicial work. Nevertheless, if a distinct administrative necessity had not arisen, I should decline to support a change which must be painful to an important section of the community. But such a necessity has now arisen. The Council has before it the reports from the various Local Governments in favour of this measure. I shall not, therefore, say more with regard to them, than that they present to my mind an overwhelming preponderance of opinion which it is difficult for the central Government to disregard. But I shall show, by one or two individual instances, the way in which the present anomalous state of things works in the rural districts. The Native Civilians have now reached a stage in their service when they must become, in the natural course, District Magistrates and Sessions Judges. We have guaranteed to them equal rights with their English brethren, yet they must be excluded from those offices in the more eligible districts where English private enterprise exists, and they must be turned out of those offices in any district into which English private enterprise comes. Let me illustrate this by two examples; one taken from Bengal, the other from Bombay. On the 17th January last, a Native Civilian was, in the ordinary course, appointed Joint Magistrate, with powers of a Magistrate of the first class, at the important station of Dháká. On the 23rd January, he received a letter from the Secretary to the Bengal Government, cancelling the appointment and transferring him to a less eligible district, on the ground that the opening out of the Dháká and Maimansingh Railway was bringing a number of Europeans into the Dháká district. The gentleman thus disqualified had won the second place in his year, by open competition in England, from among several hundred candidates; he is an English barrister, and he had proved his fitness for the post from which he was turned out by twelve years of service. In the Bombay Presidency, a Native Civilian holds the important office of District and Sessions Judge of Kanára. His head-quarters are at Kárwár, the coast terminus of the railway which, some time ago, was proposed to be constructed from the Dhárwár cotton country. If this scheme should be revived and the railway sanctioned, the Sessions Judge of Kanára would, under the exigencies of the existing law, have to be turned out of his district. Let us see what this practically means. The gentleman in question is Mr. Tagore. After a distinguished education, both here and in England, he has given about twenty years of unblemished service to the Government, and has established a high reputation as a Judge. He is a near relative of our late colleague, the Mahárájá Sir Jotíndra Mohan Tagore, who, during an unusually prolonged period, assisted this Council in making the laws of India. The well-earned encomiums in which your Excellency expressed your sense of the services thus rendered are still fresh in our memories. Yet we are told that we must not entrust to a member of the same noble house, notwithstanding his training in England and his twenty years of proved integrity as a Judge, the power of sentencing a European British subject to a short term of imprisonment. This, too, although the European British criminal has the right of immediate appeal from any sentence of imprisonment, however brief, and from any fine, however small. If it were necessary I could multiply examples. Unfortunately, the time has come when such examples will year by year multiply themselves, unless the existing law is changed.

Since this Bill was introduced, I have taken occasion to consult several of the leading Native Civilians who were appointed by competition in England. They complain that under the present law they will be excluded, as Magistrates and Sessions Judges, from the advancing districts into which British enterprise comes; and that they will be condemned to backward or remote districts where they will have less opportunity of distinguishing themselves, or of proving their fitness for higher offices. They urge that in Bengal, for example, this means that they will be shut out, as Magistrates and Judges, from the healthy Province of Bihár, and condemned for the most part of their career to the miasmatic Delta. The pleasant regions of Tirhut and Patna will be denied to them: the swamps of Bákirganj and Noakháli will be perma-

nently at their disposal. They contrast this state of things with the long series of declarations by Her Majesty's Government presented to Parliament, beginning with the Queen's Proclamation to the Chiefs and people of India in 1858, and ending with the Despatch of the Secretary of State, dated the 10th July, 1879. They rebut the plea that it is not essential that the Magistrate of the district should have power over Europeans if his Joint-Magistrate has these powers, by bringing forward a long list of districts in which there is no Joint-Magistrate. They expose the fallacy of the argument that in cases where a Sessions Judge has not these powers a European criminal can easily be transferred to another district. In the Bombay case which I have cited, a European criminal, together with the prosecutor and witnesses, would either have to be sent several hundred miles by sea to the Presidency-town, or the whole party would have to be marched inland, under guard, nearly 100 miles, in part across a tract malarious during the rains, to the head-quarters of one of the adjoining districts. The present law not only acts as a disqualification to the Native Judge, but it operates as a hardship to English criminals, prosecutors and their witnesses. The fact is, as shown by the Dháká case, that the Native Magistrate and Judge must either have jurisdiction over Europeans, or they must go elsewhere. They urge that Government will have to regulate its appointments, not by the merits of an officer, nor by his general fitness for a district, but by his power to deal with a small exceptional class of cases occurring within it. Yet by the orders of repeated Secretaries of State, orders formally placed before Parliament, the Native officers thus disqualified will in time form a substantial proportion of the whole Covenanted Civil Service. They point out that this is not only an injustice to themselves, but also a source of weakness to the Administration.

The admission of the Natives to the Covenanted Civil Service was one of the results of the Queen's Proclamation when Her Majesty assumed the Government of India. In that Proclamation she commanded that her subjects, "of whatever race or creed, be freely and impartially admitted to offices in [her] service, the duties of which they may be qualified, by their education, ability and integrity, duly to discharge." The Covenanted Native Civilians have now reached a point in Her Majesty's service when the Government must decide whether it will or will not grant them criminal jurisdiction over European British residents, as the Company had in 1836 to decide whether it would grant civil jurisdiction over such residents to the Uncovenanted Native Servants. The Government has in 1882 simply reached the same conclusion as that at which the Company arrived in 1836. But the present Bill provides the most ample safeguards against the abuse of the powers which it confers—safeguards so ample, stringent and complete as to destroy any further analogy between the action of the Legislature in 1836 and in 1882. For the present, I shall only deal with the case of Covenanted Civilians who have entered the service by competition in England. They are the class to whom the Bill is chiefly directed; they are the only class in regard to whom the Local Governments appear to have yet been consulted. So far as a scrutiny of the Civil List enables me to form an opinion, there are not above two or three Native officers, with the exception of those in the regular Covenanted Service, on whom any Local Government would confer the powers granted by this Bill for many years to come. At any rate, the Council has no evidence before it with respect to the other classes mentioned in the Bill. And I, for one, am not prepared to support, by speech or vote, the curtailment of privileges on which my countrymen set a high value, without clear evidence that the sacrifice is demanded on behalf of good administration and the common weal. Such evidence may be forthcoming at the proper stage, when the Bill reaches the Select Committee. But, meanwhile, I speak only of the principal class of Native public servants whom the Bill will affect, namely, those who have won their positions by open competition in England.

I beg the opponents of this measure to consider the very limited powers which the Bill conveys, and the stringent safeguards which it provides against their abuse. The Native members of the competitive Covenanted Service are a select body of men, who have won their way into public employment by excep-

tional exertion, and by exceptional abilities. In youth they so far overcame the inertia of the climate, and the prejudices of their race, as to set forth to a country on the other side of the globe, on the chance of securing an honourable career by open competition. Most of them had already earned distinctions at Indian Colleges and Universities. In England they had to partially re-educate themselves on a Foreign model. They had to compete in an examination framed to suit an educational system different from that on which they had been trained, and they won their appointments from among a crowd of competitors. Many of the Native Civilians thus selected are more English in thought and feeling than Englishmen themselves. After their arrival in India they have to pass through further tests, and to prove their fitness by years of faithful service, before they can receive the powers which the Bill confers. Even then, it is only if the Local Government is satisfied of the fitness of the individual officer that the powers are granted to him. And what, precisely, are these powers? The highest are those granted to Magistrates of districts and Sessions Judges, officers of about 13 to 25 years' standing. A District Magistrate can sentence a Native of India to two years' imprisonment, with fine, or, in cases of cumulative sentences, and on default of payment of the fine, to four years. This Bill would only empower him to sentence a European British subject to a term not exceeding three months. A Sessions Judge may sentence a Native of India to death or transportation for life. This Bill empowers him to sentence European British criminals to only one year. A Native criminal can appeal only to certain Courts, and only against sentences of a certain degree of severity. The European criminal by this Bill is allowed the right of appeal to either the District Court or the High Court at his own option; and he may exercise that right against a sentence of a Magistrate or Sessions Judge, however small—against a fine of one rupee, or a single day's imprisonment. The European British subject is further protected by his race privilege of the writ of *habeas corpus*, and in any case important enough to come before the Sessions Judge, by trial by jury. Nothing can be further from the truth than the statement that this Bill disregards the different degrees in which the force of public opinion acts as a check upon miscarriages of justice in Calcutta and in the rural districts. A Native Magistrate sitting in Calcutta can at present sentence European British subjects to two years' imprisonment, and to a fine, with a right of appeal only from sentences of a certain gravity. This Bill confers on the same officer, if he is promoted to be Magistrate of a district, the power of sentencing a European British subject to only three months' imprisonment, with the privilege of appeal from every sentence, however small.

I would ask the opponents of the measure whether they seriously believe that these safeguards are not ample for the purposes of justice. If they can suggest further safeguards, I feel sure that this Council will impartially listen to their proposals. I know it is hard for any class of men to part with its special privileges. The hardship is sometimes a matter of fact, and sometimes a matter of feeling. The class affected always believes that the hardship is one of fact. Whether Europeans or Natives, they plead the same argument of the thin end of the wedge, and of the total abolition of their class privileges which the change, however small, foretells. This argument was never better set forth than by the Hindús on the passing of the *Lex Loci* Act. They then expressed their belief "that the security in person, property and religion, hitherto ensured to them, thus undermined in one instance, would be eventually denied to them altogether." The forty years which have passed since these words were uttered have abundantly falsified the predictions which they conveyed. Nor have the apprehensions of the European community, on the passing of the Black Act in 1836, been more fully justified. The civil jurisdiction then granted to Native Judges seemed to our countrymen to destroy the sole securities which they possessed for their capital invested in the rural districts, and to threaten the extinction of British enterprise in Bengal. Europeans would be deterred thenceforth from settling in India, and it was vainly attempted to combat this statement by quoting Mr. Mill's evidence before the Committee of the House of Commons. The fifty years which have since passed, and the immense development of British enterprise under the protection of the rural Courts of Bengal,

now supply an unanswerable refutation of such fears. Even the abolition of the Grand Jury in the Presidency-towns in 1865 sufficed to awaken serious apprehensions. "On the abolition of Grand Juries," said the circular issued by the Landholders' Association, "there would be no protection to gentlemen from being accused of crimes of which they were entirely innocent, whenever the local Magistrate was supposed to be inclined to believe in such charges, and of being put upon their trial whenever a credulous or prejudiced Magistrate would be found." A correspondent in the *Englishman* predicted that, now that the Grand Jury was doomed, the right of calling a public meeting through the Sheriff "would be the next old institution voted effete." Another begged his countrymen to "beware of the doctrinaire dissectors. Cry out in time," he said, "and that lustily, or we may expect the fate of the eviscerated cat, whose personal objections to the operation are disregarded in the promotion of experimental science." The Public Meeting in Calcutta condemned by a formal resolution "the proposed abolition of Grand Juries in the Presidency-towns; and on the contrary was of opinion that the institution should be extended to the Courts proposed to be established in the interior of India." One speaker regarded the abolition of the Grand Juries as "the thin end of the wedge" * * * "which threatens to bring down and destroy the whole fabric of our constitution". The *Englishman* newspaper, which has so ably brought to a focus the opposition to the Bill now before the Council, quoted with approval, in 1865, Sir Eardley Wilmot's protest against "any interference with this 'bulwark of the nation.'" My Lord, there have been individual miscarriages of justice since the abolition of the Grand Jury, as there were when it still flourished. But I feel sure that the English citizens of Calcutta, old enough to remember the state of things before 1865, will agree with me that the abolition of the Grand Jury has been a boon to the English community of the city, and a source of strength to the working of the whole jury system in the Presidency-towns.

I believe that the apprehensions now expressed with regard to the present measure will, ten years hence, be found to have been equally groundless. Meanwhile, we ought not to forget that those apprehensions spring from natural feelings of alarm in the minds of an important section of the community. If we can in any way allay those apprehensions, or conciliate those feelings, I think we are bound to do so. The honour of this Council, or the honour of the Government, is not involved in any hard-and-fast resistance on points of detail. Or, rather, the honour of the Government is involved in carrying out a measure which must necessarily be painful to an important class with the utmost consideration that it can show to their feelings. But with regard to the principle involved, I think the time has come when the Indian Legislature is bound to declare itself. At such a crisis, party spirit must run high. Several months will, however, elapse before the Bill can pass into law. During the interval the Council will have time to candidly listen to every argument, and to seriously consider every suggestion. If, in the heat of the discussion, fair arguments give place to ungenerous aspersions, our duty seems equally clear. We must meets obloquy with patience, and, assured of the justice of the measure, we must wait for time to dispel the apprehensions of our countrymen at present, as time has disproved their apprehensions in the past.

The Hon'ble RÁJÁ SIVA PRASÁD said:—"My Lord, this is the grandest concession to India. I would have called it the coping stone of the liberal policy of the Liberal Government of Her Most Gracious Majesty, whose worthy representative, the liberality incarnate, my Lord, you are; but no one can say to what a height the building is destined to reach during your Excellency's incumbency. So I content myself by simply saying that the measure will be a magnificent addition to the list already long. The distinction of race in the Indian Criminal Procedure was one of the remaining mementos of the narrow policy of an honourable body of monopolist traders, though it might have suited or become a necessity at the time; but now it will be simply incongruous with advanced liberal ideas and the progress of the age. The concession is most unexpected and little asked for, and so the most valuable. I cannot conceal from your Excellency that the Indian branch of the Aryan race has been the

most intolerant towards their conquered, and had no distinction between a conquered and a slave. Up to this time the Súdras, the remnants of the conquered aborigines, who form the mass of the population, are looked down upon by the military, and the then ruling class of Kshatryas, and the sacerdotal Bráhmans, as worse than slaves. The very name Dás, a corruption of Dasyu, means a slave or thief. Prohibition to wear the sacred thread has been for the poor Súdras a lasting mark of humility and subjection. Manu says, if any Súdra takes into his head to speak Sanskrit or to teach that language, 'scalding oil' is to be poured into his mouth; nay, 'on killing a cat, a weasel, a peacock, a frog, a dog, a lizard, and an owl or a crow, a Bráhman should expiate himself by the same penance which he has to undergo for killing a Súdra'—chapter XII, stanza 132. Further, 'having slandered a Bráhman, a Kshatriya becomes liable to a fine of 8,000 *kauries* (shells) amounting to less than rupee one and a half, but a Súdra merits death'—chapter VIII, stanza 267. Let us see how the Muhammadans treated their conquered. They did not regard the Hindús even as men; hence to massacre them, to enslave their wives and daughters, to plunder their property, to demolish their temples, to deface the images, to force beef down their throats by violence, are the subjects which fill the so-called histories of the time. Even so good-natured a writer as Amír Khusro was, alludes to the Hindús in such contemptuous terms as 'raven-faced' and 'raven-like in nature' (*Zigh-rú va Zagh Manish*). The administration of the civil and criminal justice was completely in the hands of the kázís, and no Hindú could possibly aspire to be a kází. No matter whether either or both parties were Muhammadans or Hindús, the judgment was invariably pronounced according to the Muhammadan law or Shara. The same Amír Khusro relates in his Teríkhi Alai that Alá-ud-dín Khilji once sent for a kází and asked him what was written in the Code of Muhammadan law regarding the Hindús. The kází answered that the 'Hindús were' Zimmis (condemned to pay the *Jizya* tax); if asked silver, they ought to pay gold with deep respect and humility; and if the collector of taxes were to fling dirt in their faces, they should gladly open their mouths wide. God's order is to keep them in subjection, and the Prophet enjoins on the Faithful to kill, plunder and imprison them, to make them Mussulmáns or to put them to the sword, to enslave them, and confiscate their property. Abu Hanífa alone permits the levying of the Jizya, but the remaining successors of the Prophet have uniformly laid down that the Hindús ought to be made Musulmáns, otherwise lose their heads.' The Emperor smiled, and remarked that he did not know what the Code might prescribe, but that he had issued an edict that only so much grain, milk and other articles of consumption as would suffice for a year should be left to Hindús, and that they should in no case be allowed to lay by any money. Akbar was the only Emperor who raised the Hindús and kept down the race distinction as low as he could, but that was a matter of necessity. He had seen how his father was driven out from India. He could not reckon on receiving any succour from Central Asia. His only hope for his Empire was with the Hindús, and the Hindús well supported him. Now the days have come that a Hindú is appointed by your Excellency Chief Justice, or Kází-ul-Kuzáat, of the metropolis of the Indian Empire. We Hindús do not consider the British as our conquerors. We do not only acknowledge the divine right of our sovereigns, but find divinity in their person. I will never forget what the Pandits of Benares spoke to Sir William Macnaghten. I was then a boy reading in the Sanskrit College. Lord Auckland came with Sir William. His jamadár, being a Muhammadan, was stopped at the gate. Sir William asked the Pandits how it was that the English were allowed and the Muhammadans not. The Pandits quoted Bhagavat Gita that 'Rulers are divine.' Leaving aside the divinity for the present, is it not a fact that we sought the protection of the British? Jagat Seth Mahtábrai, one of the ancestors of the humble speaker, was one of those three who invited Clive to Murshidábád and helped him to establish the British supremacy in Bengal at the sacrifice of his own life. The idea of any restoration of a Kshatriyan Empire is as far from the bosom of a Hindú, as the idea of restoration of the Roman Empire in the family of Romulus, driving out all the 'barbarian' races across the Danube, is from the bosom of an Italian. Taimuri dynasty was gone; the choice lay between the bloody Muhammadans from the North-West, like Nádir Sháh, who massacred Delhi, or

Ahmad Shah Abdali, who massacred Mathura, and the freebooter Pindari Mahrattas. India threw herself under the protection of the British like a sheep running from a tiger and a wolf to her shepherd. We look to our Sovereign Kaisar-i-Hind, not only as Divine ruler, but as our own mother. We take her as our own, and I leave it to the generous Christian feelings of the British nation whether we are still to be treated as a conquered and subjugated race. The *Indian Daily News* says very sensibly that 'we shall rise above class questions and race questions, and confess, even if it be with some natural reluctance, that the change in the law which is now proposed is practically inevitable. Besides, we have to consider whether determined and narrow adhesion to exclusive privileges is not the most dangerous policy the European community could adopt. For the sake of England in India, and in order to further strengthen and cement the union between the two countries, is it not necessary that Englishmen should give the highest proof in their power of the thoroughness with which they adopt India, and take upon them the defence and advancement of her interests?' The *Statesman* takes the same just and impartial view of the question. Though there is no doubt that a very strong feeling, whether right or wrong, but almost universal, exists against the Bill in the European quarters, as a gentleman was just the other day saying, wherever he went he was asked 'Have you seen that infernal Bill.' They take it as certain that all their countrymen who have to appear before a Native Magistrate will be sent to jail, and the reason they assign for it is the 'widening,' as they are pleased to think, of the breach between the Natives and Europeans. Some say that there is neither newspaper nor High Court with astute barristers in the Mufassal; but I do not know if there is any place in India now beyond the pale of the newspaper influence, or where barristers cannot go; the wire has brought the High Court within an easy reach of everybody. As for a Native's sending a European or his wife to jail, there is no fear of that. If there is any fear, the fear is for his unjust acquittal. Mr. Duthoit, the Judicial Commissioner of Oudh, who is no mean judge of Native character, truly says: 'I do not mean that they (Natives) would be likely, as a rule, to press hardly upon Europeans; I think, on the contrary, that they would, as a rule, unduly favour the Europeans.' Woe to the Native who has a European before him to judge! His position will be most unenviable, and fool he must be if ever he takes into his head not to ask for transfer of the case to some other tribunal or not to acquit the culprit totally. So, whatever the Europeans may have to say against the Bill, they cannot show any good cause for its condemnation, except the domineering race pride, or, as Mr. W. B. Jones says, the 'unreasonable class prejudice,' which cannot brook any idea of equality; but is such a pride to be encouraged? Does it not widen the gulf which we are trying to bridge over? Will it not keep the wound fresh which we want to heal up? The Government is bound to exonerate the integrity of Her Imperial Majesty's Proclamation of 1858. It is true that the Natives will not gain much by this concession. At the same time, it is also true that not the least harm will be done to the Europeans. It may do, I am afraid, some harm to the Natives. This new power may stand, to a certain extent, as a bar in the way of their promotion to a District Magistracy or a Sessions Judgeship; nay, some alarmists see a greater harm looming at a distance; they argue in this way, that, if the Government has broken the acknowledged privilege or personal law of their own countrymen, the Britons, like a straw, how can they be expected to maintain very long our own privileges and personal laws, which, though dear to us, but often approach absurdity in the eyes of the advanced civilisation. Simply an incongruity will be removed. Our European brethren ought to have a little faith upon their European Governors, and to be sure that these Governors will never appoint any one Justice of the Peace unless they know him to be the fittest man before whom, if occasion arises, a European can stand to be judged. Hear what Sir Alfred Lyall says:—

'No European officer is appointed to be a Justice of the Peace or Magistrate of a district or Sessions Judge, until he has been found to be, by experience and character, fitted to exercise the powers and perform the duties which are attached to these offices. During the period that ordinarily elapses before any officer can attain to the position of Magistrate of a district or Judge, or is appointed to be Justice of the Peace, ample opportunities are afforded of forming an

opinion as to his qualifications for the offices in question; and he is not appointed to them if he has shown himself to be unfit to perform the duties and exercise the powers belonging to them. The interests of the European British subjects and of the administration would be sufficiently provided for, if the general restriction, under which no one who is not himself an European British subject has jurisdiction over an European British subject, being removed, power be left with the Local Government to appoint Justices of the Peace those Native members of the Covenanted Civil Service who have proved their fitness to exercise the jurisdiction. The Local Government would then apply the test of personal fitness to each particular case for Native as well as for European members of the Covenanted Civil Service.'

"The worth of the argument or analogy brought forward by my hon'ble colleague, the learned Dr. Hunter, that, if so many privileges of the Natives have been destroyed, why not this privilege of the Britons also is to follow suit, I leave to your Excellency to judge. However, I do not know if the Britons also burnt their widows like the Hindús, or killed their infant daughters like them.

"Now, so far, whatever I have said, I have said as a representative of the Native community at large, and have echoed India's voice; but, if your Excellency allow me to express my own individual opinion, may I ask whether this feeling, right or wrong, is to be totally derided and set at nought? I would rather join with the Commissioner of Coorg in saying that 'the provisions of the present law on criminal procedure, which limit jurisdiction to try, for criminal offences, European British subjects to persons who are themselves European British subjects, are wise, and should, for political reasons, be maintained.' I would rather agree with the Hon'ble D. F. Carmichael in saying that 'after all, there is such a thing as *privilege;* this one is highly valued by those who possess it, and certainly does no harm to the Native population; while its surrender would, in my opinion, cause great exasperation.' I would rather coincide with the Hon'ble W. Hudleston in saying 'that the proposed extension of jurisdiction would be impolitic, and is not expedient; I am confident it would raise an outcry that would aggravate race friction far more than the removal of the already existing disability attaching to a small number of officials would allay it.' I would rather side with the Right Hon'ble the Governor of Madras, on whom, if my memory does not fail me, almost the whole brunt of all the Parliamentary debate fell when he was Under Secretary for India under His Grace the Duke of Argyll, when he says such weighty words as 'it is perhaps a pity that a question was raised just now which affects so few people.' There is much truth in Sir James Stephen's remark that 'in countries situated as most European countries are, it is no doubt desirable that there should be no personal laws; but in India it is otherwise. Personal, as opposed to territorial, laws prevail here on all sorts of subjects, and their maintenance is claimed with the utmost pertinacity by those who are subject to them. The Muhammadan has his personal law, the Hindu has his personal law. Women who, according to the custom of the country, ought not to appear in Court are excused from appearing in Court; Natives of rank and influence enjoy, in many cases, privileges which stand on precisely the same principle; and are English people to be told that, whilst it is their duty to respect all these laws scrupulously, they are to claim nothing for themselves? That whilst the English Courts are to respect, and even to enforce, a variety of laws which are thoroughly repugnant to all the strongest convictions of Englishmen, Englishmen who settle in this country are to surrender privileges to which, rightly or otherwise, they attach the highest possible importance? I can see no ground or reason for such a contention. I think there is no country in the world, and no race of men in the world, from whom a claim of absolute identity of law for persons of all races and all habits comes with so bad a grace as from the Natives of this country, filled as it is with every distinction which race, caste and religion can create, and passionately tenacious as are its inhabitants of such distinction.' I would rather allow the incongruity to remain untouched, at least for the present, as greater incongruities remain. For instance, a rich Bábú's European coachman can keep as many arms as he likes unchallenged; but the Bábú Sahib, or, if he is so fortunate as being dubbed with some title, his son and brother, have to go every year to the Magistrate's Court for the renewal of the license with his menial servants, and suffer all the indignities and annoyances inseparable from such a procedure. My

countrymen (advanced and anglicised) will call me a traitor to my country. The Native newspapers will vilify me; but if the Hon'ble the Law Member is not afraid of the British lion, wagging his tail and roaring, why am I to care for the bellowings of a few Indian sheep? However, for the present I only desire the Select Committee, when formed, to take both sides of the question into their serious consideration. It is possible that the Select Committee may add some more sugar to the pill. The Committee may think fit to strike off section 2 altogether, or go further, and, striking off clauses (*c*) and (*d*) in section 1, change 'invested with the powers of a Magistrate of the first class' for 'District Magistrates or Cantonment Magistrates or Sessions Judges or equal to them in rank as Deputy Commissioners in Non-Regulation Provinces.' I reserve my vote in favour or against the Bill till it comes to that stage. This moment my head, under the dictates of prudence, is in its favour; but my heart—a true heart of a true Native, labouring under a sense of deep obligation and sincere respect to the British nation for all the good it has done to my dear country—is against it.

"Ignorant people—I mean ignorant of facts, though otherwise well educated—may charge me with flattery; but a life's experience cannot be forgotten. How much I value the goodwill of the European British subjects; how much I appreciate their services to the country, and how far I look to them for the protection of our life and property and the advancement of our welfare, the mention of one single incident, I think, will amply suffice. It was, if my memory does not fail me, the evening of the 4th June, 1857, when the alarm gun had been fired, all the non-combatant Europeans with their families had assembled in the mint at Benares. A few European gunners were blowing up on the parade some Native regiments of infantry and cavalry for refusing to lay down arms and mutinying. The time was critical. I was with the Governor General's Agent, Mr. Henry Carr Tucker, at the Mint. The runaway mutineers, many wounded and many with arms, were passing by the gate of the Mint towards the Burna Bridge. Not more than a dozen or two of the European soldiers were protecting the gate, pointing their guns towards the road. The hope of all of us was centred in them. Benares has a population of some two hundred thousand souls, but they all were utterly useless at the moment. The shops and houses were all closed, and the streets deserted. We were not so much afraid of the mutineers for our lives as of the city ruffians. The European soldiers were daily passing up the country by bullock-train, in batches, to join General Havelock's army. These few soldiers were detained from the preceding day's batch. That day's batch had not arrived. With what anxiety we were expecting it I have no words to describe; every moment was precious. We would have offered each soldier's weight in silver had they been procurable. Mr. Tucker thought that they might have been waylaid by the mutineers and wished me to ride down to Rájghát to look after them. How happy I felt when I saw there the bullock-carts full of European soldiers just arriving, I have again no words to describe. This handful of Europeans saved Benares. Such incidents can be multiplied by scores and hundreds. But I do not feel myself justified in further encroaching on your Excellency's valuable time."

The Hon'ble SIR STEUART BAYLEY said:—"The motion before the Council is not one which, under ordinary circumstances, would require any expression of opinion from me; but, owing to the course the discussion has taken, and to the direct personal appeal that has been made to me, I feel bound to express my own views on the subject. And, first, I think it is due to our colleague, Mr. Ilbert, that it should not be supposed that he is the prime mover and originator of the Bill. Those who have read the papers of the case must be aware that the Bill had its origin in a suggestion made in March last by the Government of Bengal, when Sir A. Eden was at the head of the Local Government. That suggestion was circulated in the ordinary way for the opinion of other Local Governments, and on finding that there was a general agreement among them as to the expediency of legislation, and that in this opinion the Secretary of State concurred, the duty of framing and introducing the Bill devolved, as a matter of official routine, on my hon'ble friend. I make these remarks, because much of the odium with

which he has been assailed seems to be based on the supposition that the Bill is in its main principle the outcome of his own reforming zeal, whereas, whatever be the merits or demerits of that principle, the responsibility should in justice be far more widely distributed.

"After the clear statement of the legal aspects of the case which we have heard from the member in charge of the Bill, I need not go over the same ground; but I may say that the aspect in which I have all along regarded the Bill is, that its main and important object, its substantive principle in fact, is to allow Native Civilians who may rise to be Sessions Judges or District Magistrates to exercise the powers which the law vests in District Judges and District Magistrates as such, and that they should not be disqualified from exercising those powers on the score of birth-place or nationality. The other or permissive provisions in regard to Assistant Commissioners and Magistrates of the first class I understand to be an adjunct to the main principle of the Bill, a fringe or margin as it were, and intended only to meet special cases, which the Local Government might otherwise be at a loss to provide for without serious inconvenience; and from this point of view the measure seems to me to be just and reasonable. Given the education which has enabled a Native to succeed in entering the Civil Service is not the fact of his having served with sufficient credit to be appointed to a District Magistracy or Sessions Judgeship,—a grade, be it remembered, that he cannot even temporarily reach till after an apprenticeship of some eleven or twelve years, and permanently not in less than eighteen years,—is not this as good a guarantee as can reasonably be desired of that man's fitness, honesty and practical ability? and in that phrase I include, not merely natural ability, but the assimilation, by practice and study, of the full legal and juridical ideas which guide our Courts. I think we have here all the guarantee that can reasonably be expected that the principles of our law will be properly applied, and this is all we have a right to demand. It seems to me that the exercise of these powers is the necessary corollary of the admission of Natives to the Civil Service. Practically, I hold that, when Government committed itself to the one step, it committed itself to the other; the question was only one of time, and the present Bill gives expression to that principle with as little alteration of existing arrangements, and with as careful a regard to the safety of the important interests concerned, as any Bill framed with this object could have attained. Before it can pass, however, the Bill will have to be criticised in ordinary course by the Local Governments (to whom only the preliminary principle of the Bill was referred in the first instance), and its working can be carefully examined and discussed, and the opinions of the Local Governments and their officers, as well as of others, will be fully weighed and considered before any action is taken. Now, there are two aspects from which the Bill is assailed. One is that Native gentlemen, no matter what their qualification, must be taught to remember that they are of a subject race, and, as such, unfit to try any members of the dominant race. On this argument I am unwilling to dwell. It has been developed into what our American cousins call 'spread-eagleism.' I have absolutely no sympathy with it, and the frequent recourse to such an argument is not creditable to our national character. But there is another aspect to the case of the opposition which I think deserves most attentive consideration; and this is the real danger in which the isolated European, living in the Mufassal, runs from having false cases trumped up against him. It is right that I should state publicly that this danger is a very real and very serious one; for, probably, no member of this Council has had the same experience as I have of the lives led by planters in the Mufassal. My own experience has given me a strong feeling on this matter, and anyone who knows the extreme bitterness with which disputes about land are fought out in the Mufassal, and the unscrupulous methods to which recourse is had in conducting these disputes before the Court,—methods to which a planter cannot have recourse,—will understand how precarious his position may become, and how essential to him it is that the law should be well and wisely administered. So far, then, as the argument against the Bill is based on a fear that these dangers are perceptibly increased, and that under the new Bill the law will be less well and less wisely administered than at present, I consider the objections deserve a most carefu

examination. As I have already said, my own opinion is that, in respect to Native Civilians who have reached the position of District Judge or District Magistrate, we have the best possible guarantee of their qualifications, and the other provisions of the Bill do not take effect *proprio vigore*, but merely give Local Governments the power of selection in special cases. But I imagine that what has really excited the feelings of the European population in this matter is, not so much the actual extension of power contemplated in this Bill, but the apprehension that it is only a stepping-stone to a larger measure which would really do what many speakers and writers seem to think this Bill will do, namely, place all Europeans quoad jurisdiction exactly in the same position as Natives of the country. The actual scope of this Bill has been clearly explained by Mr. Ilbert, and, so far from its being a stepping-stone to a larger measure, I can certainly say for myself, and, I believe, for the Government of India at large, not only that there is no such intention, but that the proposal itself would be regarded as dangerous and uncalled-for. No, so far as we are concerned, what Mr. Ilbert said on the score of the finality of this Bill is, I know, strictly correct, and I hope that there may be no further misapprehension on this point.

"And now I have a few words to say in regard to the agitation which has sprung up in opposition to this measure. I confess that I failed to foresee either the extent or the depth of feeling which the measure has aroused among the European population; and it is only fair to add that I think the Viceroy had a clear right to expect from the Local Governments, or, in regard to Bengal, from myself, a more decided warning than he received of the spirit which the proposal would arouse. I cannot, looking at the evil effects which have ensued, and must ensue, from the agitation going on, but deeply regret that I failed to gauge accurately the feelings of the great body of my countrymen, and of even my many personal friends among the planting community. I confess I had hoped that twenty-five years had really done something to obliterate the feeling of race antagonism, of bitterness and hatred, which was familiar to us a quarter of a century ago. It seems that I was in error, and I deplore, as we all must deplore, the palpable evidence that I was mistaken. Nor am I prepared to say, in response to the challenge of my hon'ble friend Mr. Evans, that he has in any way exaggerated the depth and earnestness of the feeling which this Bill has evoked, or the probability of its continued ill effects. It is one thing, however, to oppose this measure on the ground that it threatens rights dear to Europeans, and that it jeopardises the liberty and property of the European community in the Mufassal. I believe the fear to be ill-founded, but at least the objections on this score deserve to be anxiously considered and to be treated with all respect. But when the ground is changed, and rhetorical appeals are made to race hatred; when bitterness and vituperation directed against the whole body of Native officials take the place of calm reasoning, then I say that those who employ these weapons incur a very serious responsibility. It is by the use of these weapons that the old sore is re-opened and embittered, and that the healing influences of the past quarter of a century are nullified and destroyed in an hour. I have expressed my own regret that I did not foresee that this would take place, and I look forward with still deeper regret to the continuance of a state of things which by action and re-action must continue to keep the sore open. I wish it were in any way possible for the Government directly, and at once, to close the question one way or the other; but it is not easy to see how this can be done without incurring still more serious evils; and I can only hope that, so long as the question must remain open, it will be discussed candidly and fairly, without threats and without vituperation, with as little appeal as possible to the passions of race hatred and race contempt, and with the moderation which persons who really have reason on their side generally find to be the most successful weapon in their armoury. To such arguments the Government will give full and fair consideration."

Lieutenant-General the Hon'ble T. F. WILSON said:—"My Lord, with regard to the measure which is now before this Council, I occupy a position totally different from that of every other member of your Excellency's Govern-

ment, inasmuch as I have alone, from the commencement of its consideration, been compelled by my convictions to take the very unusual course of opposing those with whom I have the honour to be associated. It will be within the recollection of your Excellency that I availed myself of the first opportunity I could of recording my dissent from the views of the other members of the Government. And on a later occasion, when the matter came under the discussion of the Government, I entered at some length into an explanation of the views which I entertained, and, with your Excellency's permission, my dissent from the recommendations made to the Secretary of State was duly recorded.

"It is not necessary for my immediate purpose that I should enter upon this occasion into any detailed explanation as to why I hold the opinion I do; it will suffice for the object I have in view, that I should honestly and frankly declare that the opinion which I held more than six months ago I maintain as strongly to-day. I am opposed to the measure that has been brought forward by the Government. But whilst sympathising with those who are anxious that this measure should not become law, and thus bring about the changes which the Bill will produce,—whilst sympathising with them, still I must, in the strongest manner I can, condemn the violent language which has been used towards the Government. I desire further to condemn, in the strongest terms I can command, the malicious and scandalous personal attacks which have been made upon my hon'ble colleagues, and more especially upon your Excellency the Viceroy, in your great and high position as the representative of the Queen in India. Sympathising as I do with the opponents of the measure, and anxious as I am that the Bill should not become law, I must say that I hold in contempt many of the measures which have been resorted to in order to increase outside agitation. My Lord, there is no member of your Excellency's Government, there is not a person who is sitting round this table, who is more anxious and desirous than I am to receive outside criticism, for I think that, in these days of enlightenment and with the spread of education, the more the Government court publicity with regard to their intentions to alter the laws of the country, the better for the Government, and the better for those it governs; and when that criticism comes to us from a largely increasing population of Englishmen residing in the Presidency-towns, and others far away in remote districts of the country in pursuit of their several avocations, distinct, separate and independent of the Government,—I say, when such criticism and advice is presented to us through the medium of a temperate and discriminating Press,—it is indeed valuable, as making known to those who are entrusted with the government of the country, the wishes, the hopes, the fears, and all the general requirements of those who are committed to our charge; and it does something even more than this, for it, in some small degree, relieves those who are entrusted with high office of some of the heavy responsibilities which are inseparable from such position.

"The Government has been urged to-day, by several hon'ble members who have spoken, to withdraw this Bill. Now, I have considerable experience of the Government of India, for it has been my privilege to serve under eleven Viceroys and Governors General, and I have seen other cases, during that long period, when the Government have stood very much in the same position towards the British public of India as they stand to-day; but never have I seen such violence and unnecessary agitation as has been imported into the discussions on this measure; and I desire to say that, anxious as I am, in what I believe to be the interests of this vast country, that the proposed measure should not become law, still I am bound to add that, in my opinion, no Government ought to yield to the violence and hysterical excitement which now rages around us. In the presence of this it seems to me that there is but one course which Government can safely adopt, and that is to ascertain further the views and opinions of many more of the officials who are spread over the country. The time which this will occupy, will permit of passion cooling down, and we shall then be able to ascertain to a greater extent than we have already done the opinions of the various classes on the question now under consideration. These measures will enable those who like to change their opinions to do so, if further information should tend to that end.

"My Lord, there is another feature in connection with this great controversy which has given me, individually, great pain; because, if I am anything at all, I am a soldier in every feeling and idea; and those feelings have been wounded by the miserable and pernicious advice which I have seen tendered by some irresponsible persons to the volunteers in India. It is known to your Lordship, and it is known to my hon'ble colleagues, that, as the head of the Military Department, I take a keen interest in the volunteers in India. But, apart from the official position I hold, it would be strange, indeed, if I were not a friend of the volunteers in this country. During by far the most eventful period of my life, I was closely associated with a body of volunteers, who took a prominent part in one of the most protracted and deadly struggles which has taken place during the past century, and they materially helped to write one of the most brilliant pages in our Indian military history. For these reasons I am, indeed, pained to read of the unpatriotic course which has been recommended to the volunteers. Can any volunteer in his senses suppose that his resignation, or that of any number of his comrades, will have any influence on this Council? No. This Council will do as it has ever done. It will act fearlessly; it will ascertain all the facts of the case; it will seek further information, and it will decide as it thinks best for the interests of those who are committed to its care. But it has been said that the recommendation has been made with a view, not so much to embarrass or intimidate this Government, as to show to the House of Parliament in England the necessity of reversing hereafter any decision in favour of the measure which may be arrived at by the Indian Government. Now, if there is one thing which would rivet fast the whole thing, it would be procedure such as this. I cannot conceive anything more wild. But, my Lord, I hope that time will bring reflection, and that calmer, wiser and more patriotic counsels will prevail. I hope that the volunteers of India, mindful of those responsibilities which they have voluntarily taken upon themselves, will remain, as heretofore, faithful citizen soldiers of the Queen Empress of India.

"In conclusion, I will only say that, as regards the measure which is now under consideration, I maintain, as I nave always maintained, distinct opposition to it; and, believing it to be impolitic, I hope it will not become law. To this extent I sympathise—I repeat, I sympathise—with those who hold similar views. Beyond this I cannot go, for I desire to separate myself from the unnecessary violence and agitation that has taken place outside this Council chamber."

The Hon'ble MR. GIBBS said:—"My Lord, it must be remembered that we are not now discussing or defending the principle of the Bill. That will form the subject of a future debate; but as member in charge of the Home Department, and, therefore, intimately connected with the general administration of justice in the Empire, it has been considered right for me to offer some explanation regarding the introduction of this measure, specially as it has, simple though it be, raised a perfect tempest among the European community.

"In so doing, I fear I may repeat some of the arguments used by those who have preceded me, but this I cannot help, nor do I think in such an important matter it is to be regretted.

"First, I think some explanation is required to show why the Government has remained silent up till now. The rules of this Council have been, as is well known to the members, recently amended with the object of giving greater publicity to measures. When leave for this Bill to be introduced was asked for, as the new rules were not in force, it could not be published, and, in consequence, the only way the Government could inform the public of its purport was by sending it by administrative order to the public newspapers. It has not yet been published in the *Gazette*, as my hon'ble and learned colleague's motion to-day shows; and, until this is done, no opinions of Local Governments and Administrations can be called for on it. Now, in accordance with the usual custom, such will be called for, and, when submitted, be laid before the Select Committee on the Bill. It is only, therefore, to-day that we have had the

opportunity of saying anything about the matter. The opinions already published were invited, not on the Bill, but on a proposal submitted by the Government of Bengal, and which, as usual in such cases, was forwarded to the other Local Governments and Administrations for opinion, on receipt of which, as they were nearly unanimous in favour of the Bengal proposal, concurring as they did in the opinion so clearly given by Sir Ashley Eden in submitting his proposal to the Government of India (Bengal letter 1411 T. of 30th March, 1882, paragraph 4), the Bill was drafted, and leave to introduce it applied for.

"We have been accused of not consulting the present Lieutenant-Governor of Bengal. The fact is, the measure, as it came from Sir Ashley Eden, was couched in the usual terms, and was taken as the opinion of the Government of Bengal, and, as such, was, according to custom, sent to the other Local Governments and Administrations for an expression of their views.

"The measure in itself is required for the furtherance of justice and the convenience of all parties. That sooner or later such a change would have to be made has long been foreseen, and I venture to think that the time has now come when, certainly as far as Sessions Judges and Magistrates of the district are concerned, the alteration is called for to meet the actual requirements of one part of the Empire, as well as the contemplated future requirements of other parts. I will explain how this is so. At Kárwár, in the Bombay Presidency, there is now a Sessions Judge, Mr. Tagore, who was the first successful Native candidate for the Covenanted Civil Service, of which he has now for eighteen years been a member, and for some eight or more years he has exercised, with credit to himself, the duties of District Judge and Sessions Judge.

"Then, in the Bengal Presidency, there are four gentlemen of the Covenanted Civil Service rapidly approaching their promotion to be District Magistrates or Sessions Judges, one of whom, Mr. Dutt, was gazetted in Wednesday's *Gazette* as promoted to the former grade.

"I have not obtained information as to the other divisions of the Empire, but I have, I consider, shown from the above that the time has come when a change should be made to render present and impending incumbents fitted for the full duties of their appointments; and the requirement is one of increasing importance, as year by year Native members of the Covenanted Civil Service will arrive at, or come nearer and nearer to, the appointments of Sessions Judge and District Magistrate. As regards the Natives themselves, it is a measure of simple justice, in so far that the policy which was laid down by the wisdom of Parliament a quarter of a century ago admitted Natives to the Covenanted Civil Service, and by so doing not only intended, but clearly made it manifest, that they should have therein the same powers as their European *confreres*, which they will not have unless the law is amended. Surely, then, we cannot now, in the year 1883, be said to be pushing on a new measure 'with indecent haste simply to please the Natives of the country.' The entire general question is not now before us, but it has been one of long standing, from the time of Lord Macaulay to the present. In 1872 the latest step was taken. It is called 'a compromise,' not, so far as I can learn, a compromise between Natives and Europeans, but between the members of the then Government or, perhaps, of the Select Committee on the Bill; but even this showed that some change in the present direction was then felt to be required; and I remember, with reference to this, when a Judge of Her Majesty's High Court at Bombay in 1870, I minuted in favour of such a change as is now proposed, basing my opinion mainly on the inconvenience of the law as it then stood. At that time there was no Native Civilian actually in a position to require such powers, whereas now the case is the reverse. Two officers actually require them, while others will do so very shortly; and surely any unbiased person would admit that the time has arisen for going beyond the 'compromise' of 1872.

"Let me explain more fully what I mean by the 'inconvenience' argument. Take Kárwár for example, where Mr. Tagore is Sessions Judge, in the neighbourhood of which large railway-works are about being commenced. If a European commits a crime which requires more punishment than the District

Magistrate can award, and which is three months' imprisonment and fine of Rs. 1,000, he must be committed to the Sessions Court, whose powers extend to one year's imprisonment and fine; but the Sessions Judge there could not try him, and an application would have to be made to the High Court to order his commitment elsewhere. He could thus be sent to Belgaum or Dhárwár, for example, each about 80 to 100 miles distant; this would be a troublesome journey at any time; but, for some months of the year, one generally dangerous to the health of all parties, Europeans especially. Surely this would be a matter of great inconvenience, not to say danger, expense and delay to all concerned.

"In the case of the District Magistracy, present arrangements also must cause great inconvenience. They are to some extent subversive of discipline by putting a junior officer by reason of his birth only, for one particular purpose, over the head of his superior in all other matters. No gentleman can arrive at the high position of Magistrate of the district under 10 to 12 years' service; and, considering that he would not even then be appointed to that post unless the Government thought him fitted for it (I have known European members of the Civil Service whom Government declined to place in such a position),—surely, I say, under these circumstances, the measure we propose is so far merely the natural and logical result of the policy which has been laid down for more than 25 years since Natives of India were first admitted into the Covenanted Civil Service of the State.

"From the extraordinary excitement which has been raised, a stranger would be led to suppose that the majority of the Europeans in India were constantly before the Criminal Courts in serious and intricate cases, whereas, so far as my own experience goes, there are very few cases in which Europeans come before them, and those of a simple nature—petty thefts or assaults.

"All cases in which one year's imprisonment does not suffice must now go to the High Court of the Province, and this Bill makes no alteration in this law. I fail, therefore, to find any reason why objection should be made, or why a 'European British subject' should not be tried by an officer who can now try any other European, be he French, German, Italian or otherwise, not to mention those Englishmen who are not what is technically called 'European British subjects,' or an American, who might be placed before him.

"I do not now stop to consider separately the Native members of the Civil Service appointed under 33 Victoria, for, while I have some doubts whether they constitute a separate body, they are, when once admitted into the Service at the end of their term of probation, for all administrative purposes, members of the Covenanted Civil Service of India, equally with those who are appointed from home. I will, therefore, now proceed to consider the three classes of first class Magistrates on whom it is proposed that Government should confer the powers of a Justice of the Peace when necessary. These are—

"(*a*) Members of the Covenanted Civil Service;

"(*b*) Assistant Commissioners in Non-Regulation Provinces; or

"(*c*) Cantonment Magistrates.

"The proposed measure being intended to contain the entire law regarding the trial of Europeans in the Mufassal, as regards the powers to be given to the local officers, the Bill makes no difference between Europeans and Natives, just as it makes no distinction when it confers, by the previous section, Justice of the Peace powers '*ex-officio*' on all Sessions Judges and District Magistrates. It, therefore, only differs from the present law by permitting Government to confer the powers of a Justice of the Peace on Native members of the classes I have named. As this power is only permissive, we are again thrown back on the questions of convenience and fitness to exercise the powers, and these must be left to the Local Governments to decide.

"Now, I will give an instance in point:—Take Calicut or any other large seaport on the coasts of India not being a Presidency-town. Unless Government have the power of appointing a Civilian of less standing than a Magistrate of the district to hear such cases, a captain who had a complaint to make

against any of his crew might have to go some 60 miles for justice, leaving his ship lying in the roadstead in charge of a junior officer and a weakened crew, although there might be a Native Civilian on the spot as able and as capable of dealing with European crews and captains as is Mr. Dossabhoy Framjee in Bombay. Surely this is a case of inconvenience demanding a remedy.

"As regards Assistant Commissioners in Non-Regulation Provinces, the special provision is merely intended to be used to prevent inconvenience to the parties, and will probably be seldom resorted to; while, as regards Cantonment Magistrates, they are, as a rule, European Military officers, and are merely included here to complete the law as to Justices of the Peace in the Mufassal.

"Having thus, I trust, shown that there are causes of an administrative character which call for the change in the law, I may, my Lord, express my inability, perhaps from being of a somewhat unsentimental disposition, and preferring as a rule to be guided by common sense, to understand why all this commotion should have arisen about this measure—a measure which, even if the Bill became law to-morrow, and if the Local Governments were at once to confer on every Native gentleman of the classes mentioned in it the power of a Justice of the Peace—a course not at all probable,—would add but a very small number to the list of those who could try Europeans for petty offences in the Mufassal. From a return I called for, I find the entire number in the whole of India would be about twenty, while in Bengal *alone* there would be but nine, and all these members of the Civil Service.

"Much less can I understand why your Lordship should be looked upon as the leader of 'an anomalous, unconstitutional and illegal confiscation of the chartered rights and privileges of Englishmen,' or why my hon'ble and learned colleague, on whom the wrath of the European public seems to have fallen with redoubled violence, so much so that it was even suggested that he was not a worthy representative of the *alumni* of the two great English Universities, should be the victim of so much abuse, as if he alone, under your Lordship's guidance, were the sole author of the proposal, and his colleagues, including myself, were no parties to the discussion which led to it.

"Neither can I understand why the European gentry of the City of Calcutta, who have for years been subject to the Court of a Native Magistrate who can pass on them heavier sentences than, should this Bill become law, could be passed by any Sessions Judge, much less a Magistrate, in the Mufassal, should now rise to prevent their neighbours on the opposite side of the Circular Road or other parts of the Mufassal from being placed, not on a par with them, but from being saved from some of the inconveniences and trouble and expense I have above alluded to.

"I am not sure that the great bulk of the European and Eurasian population of Bengal, who are most interested in this matter, know the meaning of the term 'European British subject.' It is a mere legal creation of the Indian Criminal Procedure Code; colour has nothing to do with it; a perfectly white person may not come within its definition, while a decidedly dark one may. It simply means that the person was either himself born in England, or that his father or grandfather, from whom he may be legitimately descended, was so born; but it goes no further. If the family has been settled for four generations in India, although father, grandfather and great-grandfather may have married European ladies, the representative of the fourth generation ceases to be a 'European British subject' within the meaning of the Procedure Code and is amenable to all Criminal Courts presided over by Natives or Europeans, as the case may be, exactly as any one of his Native fellow-subjects, or any European of another nationality.

"And this, my Lord, brings me to the consideration of the articles in the Press, and the letters and speeches with which the daily newspapers have teemed during the last month or so. No one respects more than I do the right of any person or class of persons to bring forward their grievances and demand redress, and, therefore, I have read carefully this varied literature, to see what reasons it

contained to lead me to the conclusion that the proposed measure was uncalled-for or could only be injurious ; but, my Lord, though I found in those letters and speeches and articles warm eloquence, much invective, more assertions, and some insinuations, I could find no reason to show that the view I took from the first as to the advisability of this step was wrong. I venture to think that, while all must admit the meeting of the 28th to have been an extraordinary expression of strong feeling, it was, like the articles and letters in the Press, confined to feeling only ; and when a cause appears supported mainly by invective instead of calm and dignified reasoning, its importance diminishes and its significance fades.

"But we are bound, my Lord, to respect the feelings of all the races under our Government, though we are equally bound to analyse those feelings and to judge calmly and dispassionately of them, and to bear in mind that the other races may also have feelings to be equally consulted and respected ; and this we shall do most carefully when the reports and objections, which will doubtless be sent in during the next six months, come to be considered by the Governor General in Council.

"My learned colleague has explained the legal effects of the proposed measure, and I have endeavoured to show that, while it is the logical outcome of the policy of the last quarter of a century, there are also causes of an administrative nature requiring its introduction ; and there I would leave it, merely adding that although the Magna Charta has been freely alluded to, and the right which is supposed to belong to every British subject, of being tried by his peers, made the most of, I know not how the former can affect the matter, or where the latter right will be found granted to Europeans in India. In Calcutta it has long ceased, if it ever existed, and those very gentlemen who spoke so energetically about it have never possessed it ; so that I think the issue must be, as it ought to be, confined to the simple one of whether the measure is required for the due administration of justice or not ? And on this I have already shewn my reasons for holding that it is an alteration of the law which the circumstances of the time have rendered justifiable."

His Excellency THE COMMANDER-IN-CHIEF said :—"My Lord, I ask permission to say a few words on this occasion, because I have been challenged to give my free and unrestrained opinion on the policy of the Government, and because unworthy attempts have been made to intimidate me from doing my duty in regard to the matter before us.

"At the outset I beg to say that, in dealing with the question of the proposed amendment of the Criminal Procedure Code, I confined myself entirely to the practical bearings of the case. The sorrows of Native officials, the symmetry of the law and philosophic theories have no special attraction for me, for I do not believe that the world can be ruled by logic alone. What I had to consider was this. Did the Government service require any change, and, if so, to what extent was change needed ?

"I will say frankly that I should have been very glad if matters could have been left as they are. I have been long enough in India to have a very vivid recollection of the storm created by the so-called Black Act, and, having this before my mind, I proceeded to examine the question.

"Well, having been satisfied by the representations of the Home Department that it was necessary to remove some of the disabilities of the Native Members of the Civil Service, who must sooner or later be appointed to the charge of districts or to be Sessions Judges, I made up my mind to support the proposals of the Government so far as they were applicable to these two offices, and to these only.

"My reasons for going so far are these :—

"Though the principle involved is, no doubt, a large one and of considerable importance, yet it must be patent to anyone who cares to look into the matter that its practical application must for a considerable time be small.

I looked upon the change as a very tentative measure, which in its operation could be carefully watched, and which would, in a legitimate way, give us an opportunity of testing the merits and qualifications of this class of Civil Servants.

"If, unfortunately, it should turn out that officers of this class could not be trusted with extended powers, the Government of the day would be obliged to reconsider the whole position, and perhaps retrace their steps. It is obvious that a Native Magistrate or Judge who exercised his functions in a tyrannical or unjust manner would not hold his office very long. Again, the proposed change seemed to me to be in the nature of what is called a permissive Bill. The Supreme Government gives power to certain classes of its officers, but it cannot appoint these officers. It is only Local Governments that have the power of appointment, and we may rely on their not appointing to such offices any but men of the highest character and qualification; for the stronger sympathies of the Governors will naturally lie on the side of their own countrymen.

"In point of fact, I looked on the amendment of the law as a very safe experiment, and an experiment that might well be tried when its provisions would only apply to one or two individuals. I knew there would be opposition to any change, but I believed that, when my countrymen understood the case in all its bearings, they would see that it was a safe way of introducing a change which the bitterest of its opponents admit to be a question of time.

"That my expectations and forecast have been utterly wrong I freely admit, but I am not prepared to admit that the objections which have been put forward by those who oppose our proceedings are founded either on reason or common sense.

"I have hitherto attempted to restrict my observation to my own personal connexion with the measure under discussion, but there is one other point on which I have something to say. Very wicked and criminal attempts have, as you know, been made in some of the newspapers to excite animosity against the Government in the army. My Lord, I cannot trust myself to speak on proceedings of this nature. I am aware that the army may, and perhaps does, take a keen interest in a question that is engrossing the thoughts of the public; but I feel confident that the army knows its duty, and that it is thoroughly loyal to its Sovereign and to its salt.

"Soldiers have their feelings like other people—feelings that we all respect; but they also know that, if they have a grievance to redress, there is a legitimate way of putting it forward through their officers and those placed in authority over them. But what are we to say of persons who make use of such tactics in support of their arguments? They must, indeed, be in a bad way when they resort to such a course.

"It is possible that the reference to Cantonment Magistrates in the Bill may have misled people into the belief that the Government proposes to appoint Native Civilians to such offices. This would be an entire misapprehension.

"The following extract from a note which I received two days ago from the Secretary in the Legislative Department explains more clearly than I can why reference has been made to this class of officials in the Bill.

'With regard to Cantonment Magistrates, they were put in because they would not ordinarily be Covenanted Civilians, Native Civilians or Assistant Commissioners, and it was thought necessary that power should be given to appoint a Cantonment Magistrate, who would be almost certain to have to deal with European British subjects, a Justice of the Peace. Military officers who are Cantonment Magistrates can, under the present law (Act X of 1882, section 22), be appointed Justices of the Peace if they are, as I suppose they always are, European British subjects.'

"It will, then, be seen that the Government does not intend to make any real change in the system under which Cantonment Magistrates are usually military officers.

"If the reference to Cantonment Magistrates had not been made in the amendment, the effect would have been that any person, even a person who was

not an European British subject, might have been made a Cantonment Magistrate, and it was to avoid this difficulty that the point was raised in this form."

His Honour THE LIEUTENANT-GOVERNOR said:—My Lord, I must apologise to the Council for being obliged to trouble them with a few remarks at this late hour, but the desire which I share with the other members of Council to hear the address of your Excellency compels me to be very brief. I feel, however, that I could scarcely remain silent, even if I wished to do so, after the several appeals which have been made in the course of the debate to the Government of Bengal, and after recent events which have testified in so prominent a manner the strong expression of public opinion in this City and the Province. At the same time, I confess, I feel I am in a position not altogether satisfactory regarding this proposed legislation; and if I had not received so late as yesterday evening from your Excellency an assurance that the motion now before the Council was of a purely formal character which pledged no one to the principle of the Bill, but, what is of more importance to me, that it is the intention of the Government of India to refer the Bill as drafted for the renewed consideration of Local Governments, I would not have hesitated to take this opportunity to state at length, and with such ability as I possess, the conviction which I entertain that this measure is unnecessary in the present condition and constitution of the Native Judicial Covenanted Service in Bengal, and that it is inopportune, having regard to the many claims which demand the most cordial relations between the Government and the European community in India. In saying that, I am not in an altogether satisfactory position, I allude to the fact to which reference has been made, that I have had no opportunity personally of consulting the officers of Government or recording my own views upon this change in the law; though at the same time I am aware that the Government of India had received from Sir Ashley Eden a communication which favoured the view of withdrawing restrictions which now exist against Native Judges and Magistrates in the matter of the trial of European British subjects. Any defects or omissions in that respect will now be removed or remedied; and, as I shall have the opportunity of referring to the experienced officers of Government for their opinion, I think it the wiser and more appropriate course, and a course in which I am justified by the temper and excitement around us, if I reserve my own judgment till I have received those opinions. Whatever value may attach to my own views of the question—and those views I will say have not been formed or expressed only recently—they may be modified, or they may be removed, or they may be strengthened by the result of the inquiry. But whatever the result may be, they shall be communicated to your Excellency's Government with the utmost unreserve. Ample and exhaustive as was the speech of my hon'ble and learned friend Mr. Evans, with a great deal of which I sympathise, there are a great many facts which I could bring forward to support his contention that there is no administrative difficulty in connexion with the matter, and I should have been inclined to challenge more strongly than he did the competency of the Native to try European British subjects. But this is not the occasion on which I shall press those views. It is right, however, that, before I conclude my remarks, I should say a few words as regards the attitude of resentment which has characterised the public meetings and public utterances in connexion with this Bill. No man could deprecate more strongly and earnestly than myself the wild, extravagant and very dangerous sentiments to which the excitement round about us has given occasion. And I am sure no Englishman, Scotchman, or even Irishman, in his lucid moments, will think that the cause he advocates will be advanced or promoted by the threats levelled at the Government by certain writers and comments in the Press. If the Bill is not to be withdrawn—and this suggestion has come from a good many quarters—I sincerely trust the suspension of the measure for some months will induce a calmer judgment. No Government can deal with legislation, or with the withdrawal of legislation, in the presence of a popular phrenzy. Still I shall be wanting in my duty if I failed

to press on the Government that I hope that, in their absence from personal contact with the public feeling, they will not allow themselves to think that the calm which I hope will supervene is an indication of apathy or indifference. If it be the opinion of the Government of India that this is a case of temporary excitement, which will soon die out, I am sure they are mistaken; for I feel that, in the whole of my experience in India, this is unmistakeably the strongest and most united and unanimous expression of opinion of public discontent that I have ever known, and that the last state will be worse than the first. I could wish for myself that the Bill could be withdrawn, and I do so, not only for myself, but as expressing the opinion of a great many who have spoken to me on the subject, even though they support the principle of the Bill. I believe that such difficulties happen to all Governments, and that the oldest and most English course is the wisest and safest. It is in the knowledge of all of us that such a course has been adopted in many cases, in our home Parliamentary experience, and it has not unseldom been the case also in India; and, if I may venture to allude to the fact, I think your Lordship's reputation in this country as a Viceroy, who has endeavoured earnestly and honestly to promote the political and educational development of the people, will not be affected if you see your way to withdraw the Bill."

His Excellency THE PRESIDENT said:—"I am very sorry that I should feel it my duty to detain the members of this Council yet a while after the lengthened and able discussion to which we have listened for so many hours; but I feel bound to make some statement, before this discussion closes, of the grounds upon which the Government have proceeded in introducing this Bill, and to explain the reasons which led them to think that it was a right and a reasonable measure. The observations which I wish to make now will be, as far as possible, of a strictly practical character. I do not intend or desire to enter into needless controversy, for I wish to reserve to myself the freedom carefully to weigh and consider the arguments which have been adduced in the course of this debate on both sides of the question at issue. It has been to me a source of regret that I have not had an opportunity before to-day of explaining the course which the Government has pursued; but that I have not had an earlier opportunity of doing so has not been my fault. It was the intention of the Government to have taken a discussion upon this Bill upon the 23rd of February. We never had the least intention of hurrying this measure through the Council, or of proceeding with it further than the stage which I described when it was brought in as the second reading stage during the present Calcutta season; but we did propose, and it was necesary that we should propose, as the rules stood when this Bill was brought in, that it should have been referred to a Select Committee before we left here, with a view to its being afterwards circulated and published as the rules required. But when my honourable friend Mr. Evans and Mr. Miller became acquainted with the intention of the Government to take a further stage of this Bill on the 23rd of February, they represented that they were somewhat taken by surprise by that proposal. Not that I understood them to make any complaint of want of good faith on the part of the Government; but they urged that they did not expect any such discussion to come on on that date. In consequence of those representations, I had an interview with my hon'ble and learned friend Mr. Evans, on the 19th of February, and I then said to him that I was anxious that this discussion should take place, because I felt that it was only fair to the Government that they should have an early opportunity of explaining at greater length than had been explained by my hon'ble and learned friend Mr. Ilbert, when he brought in this Bill, the objects of this measure, and the reasons which had induced them to submit it to this Council. I said to my hon'ble and learned friend, Mr. Evans—'You may perhaps object to a discussion in the nature of a second reading, but it is possible for us, under the present rules, to take a formal discussion upon a reference of this Bill to Local Governments; that would afford a sufficient opportunity for the statement that I propose to make, and would not involve a discussion upon the principle of the Bill.' My hon'ble and learned friend took time to consider whether he could agree to that proposal or whether he must

adhere to the objection previously urged on his own behalf and on that of Mr. Miller to the discussion on the date proposed, and on the next day he informed me that he could not waive that objection. I then had to choose between putting my hon'ble and learned friend and Mr. Miller at some disadvantage, and putting myself and the Government at some disadvantage. I chose the latter alternative. It has been one of the many accusations made against the Government, that they delayed a farther explanation on this subject: those who have used that argument will now have an opportunity of judging of the justice of their charge. I may as well also say, as my hon'ble and learned friend is here, and will bear me out, that, when I saw him on the 19th of February, I explained to him that the Government had no intention of passing the Bill during the present session; to that my hon'ble and learned friend assented. I was, therefore, somewhat surprised when I saw next day a statement in Reuter's telegram, that something had been said in the House of Commons, which appeared to imply that this measure was going to be pressed forward now; and I immediately explained to the Secretary of State that that statement was not correct. It was founded on an entire misapprehension of the intentions of the Government. It would have been totally inconsistent with the declared policy of the present Government of India, if they had thought of unduly pressing forward this measure, and of not affording the fullest opportunity to the public and those interested in the matter to consider it. My hon'ble friend Mr. Miller touched upon that point, and he seemed, I thought, somewhat to complain that the public had not been consulted in this case in the manner in which we professed to consult them in respect to our legislative measures. Now, that charge —if it was meant as a charge—is founded on a mistake. The Government never professed that they would submit their Bills to the public before being brought in. No Government ever did or could do such a thing. All that we said was that when our measures were brought in and published, the public should have the fullest opportunity of considering them; and that we ourselves desired to consider any representations which might be made to us upon any proposals for legislation which we might so submit. To that course we have strictly adhered in this case, and have acted in perfect and absolute accordance with all our professions in respect to giving the public full time to consider our legislative proposals.

"I thought it necessary to make these observations, in order to clear away some misapprehensions and misrepresentations which have surrounded this matter for some time.

"And now I will proceed to state very briefly the history of this transaction. Something was said upon the occasion of the introduction of this Bill by Sir Jotíndra Mohan Tagore about an undertaking which had been given him last year to the effect that this subject would be considered by the Government of India. What took place on that occasion was this. When the Criminal Procedure Code was before the Council last year, one of my hon'ble colleagues,—I cannot exactly remember which,—who was a member of the Select Committee on that Bill, came to me and said that Mahárájá Jotíndra Mohan Tagore had told the Select Committee that he intended to raise the question of the powers of Native Magistrates to exercise jurisdiction over European British subjects. That was at a time when the Bill had nearly reached its last stage, and my hon'ble colleague said, with perfect justice, that it would be entirely impossible to take up a question of such magnitude upon that stage of the Bill; and he said to me—'I think, if you were to speak to the Mahárájá and tell him that, if he did not bring this matter forward now, the question would be considered by the Government, he probably would not press his notice of amendment.' I replied 'I will consult my colleagues'; and I did consult the members of the Executive Government at that time, and it was with their full consent that I told Mahárájá Jotíndra Mohan Tagore that the subject in which he was interested should receive the full consideration of the Government. Of course, by so saying, I gave no pledge whatever to the Mahárájá as to what would be the decision at which the Government would ultimately arrive. All that I did say was—and that promise I and my colleagues intended to keep—that we would consider this question after the new Criminal Procedure Code had passed. But, before we had taken any steps whatever to fulfil that pledge, we received from

Sir Ashley Eden a letter which is contained in these papers, and that letter winds up as the summary of the opinion of Sir Ashley Eden with these words:—

'For these reasons Sir Ashley Eden is of opinion that the time has now arrived when all Native members of the Covenanted Civil Service should be relieved of such restrictions of their powers as are imposed on them by Chapter XXXIII of the new Code of Criminal Procedure, or when at least Native Covenanted Civilians who have attained the position of District Magistrate or Sessions Judge should have entrusted to them full powers over all classes, whether European or Native, within their jurisdictions.'

"That opinion was expressed to us by the Lieutenant-Governor of Bengal; it was a clear and distinct opinion. There is not one word in Mr. Cockerell's letter from which I have quoted which indicated any probability that a proposal of that kind would be received, I will not say with resentment, but even with disapproval by any portion of the community. Now, it is not necessary that I should recall to the recollection of this Council who was the person who made that recommendation. You all know that Sir Ashley Eden had been for five years Lieutenant-Governor of Bengal; you all know that he was a man of large experience, and that he was intimately acquainted with the feelings of the European population; and certainly there was ample proof that he had their respect and confidence in the remarkable ovations which he received just before he left the country. Sir Ashley Eden did not accompany that letter by any other communications upon the subject, and, therefore, I had no doubt whatever that it contained his deliberate opinion and advice to the Government of India. My hon'ble and learned friend Mr. Evans says that Sir Ashley Eden only wanted to put his opinion on record; and he did not at all mean that anything should be done about it now. He only desired to say what he should like to see done at some future opportunity. But, in the first place, he says distinctly, in the summing-up of his letter,—'the time has now arrived for the change,' and, in the next place, it must be borne in mind that, if Sir Ashley Eden did not mean that the question should be taken up at an early date upon his proposal, he had a perfect opportunity of saying so; because, by a singular coincidence, marking the high respect entertained for that distinguished man by Her Majesty's Government, he went straight from the Government of Bengal to the Council of the Secretary of State at home; he was a member of that Council when our proposals were submitted to and sanctioned by the Secretary of State; and, therefore, if we had misinterpreted his views as my hon'ble and learned friend appears to think, or, if we had acted hastily on his opinion, he would undoubtedly have said so; and I cannot for a moment think that my noble friend Lord Hartington would not have communicated the fact to me: he did not do so. I should like to say one other word about Sir Ashley Eden. In the earlier stages of this controversy, before a large number of persons took to using strong language, they used language of a milder kind, and they talked about this Bill as an ideal and sentimental measure. Now, I must say that, if ever I came across a man in my life who was not remarkable for the sentimental side to his character, that man was Sir Ashley Eden. I do not think that I ever knew a man less likely to be led away by vague sentiment or mere theory than Sir Ashley Eden. Then, what did Government do? If they had been so very keen to carry out this proposal; if they had been so very ready to proceed rashly in this matter, they would have had a very fair ground for acting at once, in the mere fact that a man so experienced as Sir Ashley Eden had recommended them to take that action. But they did nothing of the kind; they consulted the Local Governments on the subject, and the opinions of those Local Governments are before this Council. I have heard it said that those Local Governments felt themselves bound to give opinions which they thought would be agreeable to the Government of India. Well, really, it is needless on behalf of the Local Governments that we consulted—of men so eminent as those who fill the office of heads of those Governments—for me to reply to a charge of that description. The question was very carefully considered by those Governments, and their opinions are, with the single exception of the Local Government of Coorg, in favour of amending the present law. It is quite true that the Government of Madras were divided among themselves, and that the opinion given in favour of the Bill was only decided

by the casting vote of the Governor of that Presidency. It is also true that another gentleman, Mr. Howell, has given an opinion which, if not absolutely clear, must on the whole be regarded as unfavourable to this proposal, but he reported as Commissioner of the Birárs to the Resident at Haidarábád, who advocated the principle of this Bill; and, therefore, I am strictly correct in saying that all Local Governments, with the exception of Coorg, were in favour of an alteration of the law. My hon'ble and learned friend Mr. Evans said that the only Local Government that is really concerned with this question at all is the Government of Bengal. But it was the Government of Bengal which started the question. I do not observe, however, that the European community in other parts of India appear inclined to admit that they have nothing to do with this subject; and I venture to think that all Local Governments have an interest in this matter, and are entitled to speak upon it. Can it be supposed that those distinguished men—many of them personal friends of my own—who are at the head of Local Governments; if they had anticipated—I will not say danger, but—serious inconvenience, would not have advised me privately that this was a measure that ought not to be pressed forward? There are, doubtless, in these papers differences of opinion between different Local Governments, as to the extent to which this measure should go, just as there have been differences among members of the Executive Council on the same subject. My hon'ble and gallant friend the Commander-in-Chief says that, though he supports the measure, he would confine it to District Magistrates and Sessions Judges. Sir Charles Aitchison, on the other hand, went further than any other head of a Local Government; and the measure as produced and brought forward by the Government of India is one which has struck a mean between these different proposals and which, on the one hand, does not go so far as Sir Charles Aitchison recommended, and, on the other, goes somewhat further than the recommendations of some other Local Governments. Indeed, as a matter of fact, the measure was drawn up mainly in accordance with the amendments of the Code suggested in Sir Alfred Lyall's letter. Now, what was the next step taken with regard to this question? The next step taken was that the Government of India sent a despatch to the Secretary of State, Lord Hartington, last September, containing their proposals and forwarding the papers now before the Council. Lord Hartington must have received that letter late in September. It was upon the 7th of December that, in an answer to that letter, he stated that he had very carefully considered our proposals in Council, and that he gave them his sanction. My hon'ble and learned friend Mr. Evans alluded to the fact that this circular to Local Governments was not sent to the Government of Bengal. The course taken on the occasion was in accordance with the practice generally pursued; and it is a perfectly reasonable and intelligible practice, followed by all the departments of the Government of India, that, when one Local Government originates a proposal on which the Government desires to consult other Local Governments, the original proposal is sent round to those Governments, but not sent back to the Government from which it, in the first instance, emanated. The Bill was prepared and drafted in strict accordance with the proposals sanctioned by the Secretary of State. Leave was given to introduce it on the 2nd of February. It was brought in on the 9th of February; and the papers, containing the opinions of Local Governments, were circulated to members of Council and given to the public at the earliest possible opportunity. I believe I am right in saying that they were circulated to members of Council on the 12th February.

"That is the history of this transaction up to the introduction of the Bill. And I turn now to consider what was the state of things in respect to the position of Natives of India in the Civil Service of the Crown, with which we had to deal. I am dealing now solely with the case of the Covenanted Civil Servants. I leave aside the question of the non-regulation Provinces, which is not material to the present argument. I say nothing of Cantonment Magistrates, because my hon'ble and gallant friend the Commander-in-Chief has explained that Cantonment Magistrates are almost invariably military officers, and that no Native gentlemen are likely to be appointed to positions of that kind. The question, therefore, we have to consider here relates to the Native members of the

Covenanted Civil Service, because it must be borne in mind that, although, in departmental practice, it has been the custom to describe the members of the Covenanted Civil Service admitted under Lord Lytton's rules as members serving under the statutory rules, they are under those rules themselves—rules approved by the Secretary of State, Lord Cranbrook, and laid before Parliament—admitted to employment in Her Majesty's Covenanted Civil Service. These are the words of the rule as sanctioned by the Secretary of State and by Parliament; and, therefore, the persons with whom we have to deal are the members of the Covenanted Civil Service. Our proposal, I would just point out, is a very much narrower one than that which was made in the year 1857, and to which Mr. Evans alluded. In that year there were no Native members of the Covenanted Civil Service. The proposal of 1857 would have subjected European British subjects to the jurisdiction of all the Mufassal Courts of every grade. The present Bill does not go nearly so far. Well, what is the state of things with which we have to deal now? I have said that in 1857 there were no Native members of the Civil Service at all. They have come in since;—first, by competition, having gone home and competed on equal terms with Englishmen, Irishmen and Scotchmen, and won their way in that competition into the Civil Service; and recently under the new system inaugurated in the time of Lord Lytton. The time has now arrived when some of these gentlemen have risen to high judicial positions. Mr. Tagore is one, and I have been informed that Mr. Dutt has also been raised to a similar office. Therefore, they are now beginning to reach these positions, and the number of those who fill such appointments must gradually and steadily increase. Mr. Miller asks in what have the times changed since 1872? They have changed in this respect, that some of these Native gentlemen have acquired these important positions, and others will go on rising to them in increasing numbers in coming years. But the great change which has taken place in regard to this question from an administrative point of view has been that which was made by Lord Lytton's Government in 1879. That change was made by the express order of the Government at home: indeed, after the reiterated orders of successive Secretaries of State. I am not about to express any opinion as to the mode in which these gentlemen are now admitted into the Covenanted Civil Service under the rules of 1879. It may be that these rules can be improved. Nothing is more probable than that experience may show that they are capable of amendment. But what we have to consider is, what is the position in which these rules place the gentlemen admitted under them? and what will be the effect of them as time goes on? These gentlemen will rise in the Covenanted Service year by year, and they will be entitled to hold higher and higher offices as they advance, until ultimately they will attain to the highest judicial offices below the High Court. Now, it has been contended that the Local Governments, when they spoke of Covenanted Civilians, only meant those who had got in by competition. I have no reason to suppose that that is the case with any of the opinions which have been expressed, because the words 'Covenanted Civil Service' cover all the members of that Service. The Hon'ble Mr. Evans quoted Mr. Elliott, the Chief Commissioner of Assam, and he said that Mr. Elliott only proposed that these powers should be conferred upon persons who had got into the Covenanted Service by competition. Mr. Elliott no doubt drew a distinction between the two classes; but he said that he would extend the powers to the second class when they became District Magistrates or Sessions Judges. Now, it seems clear to me that, as these gentlemen in the Civil Service rise to the higher appointments, especially to the appointments of District Magistrates and Sessions Judges, increasing administrative inconvenience must ensue unless these additional powers are conferred on them. If they are to hold these offices, it appears to me that inconvenience of a serious kind must arise as time goes on; indeed, I shall have to show that it has arisen already. The Hon'ble Mr. Evans has said that what we ought to do is to give the best justice we can to everyone in the country without giving rise to administrative inconvenience. I entirely concur in that opinion, and I say administrative inconvenience has already begun to be felt, and it will increase. That being the state of things with which we had to deal, some of these gentlemen being already in high administrative positions, and a still

larger number coming on from below, we felt it our duty to see in what way we could best remove this administrative inconvenience, and, I must also say, the injustice to suitors which would be caused by dragging them long distances over the country.

"I turn to consider what is the scope of the Bill. I have shown you that the extent of our Bill is very much less than that of the Bill of 1857. It is very much less than that of the Bill brought in by Lord Dalhousie's Government in 1849. We have confined it to the strict necessities of the case, and the result of it would be that, if it were passed to-day, it would at once confer jurisdiction over European British subjects upon only two persons in India; and the number who would rise to that position during the next few years might not exceed four or five. That statement supplies, as it seems to me, the strongest argument against the proposal of the Government. It is said, why do this now when it will only affect Mr. Tagore and Mr. Dutt? Why do this now, when, if there is administrative inconvenience, it is only in one or two places? and I admit that I am bound to meet that objection, and to explain why the Governmnet think that this is a convenient opportunity for making the change.

"But, before I do so, I must point out that, of course, that argument cuts both ways. If the scope of the Bill is so very small, then it seems not altogether reasonable that it should have been encountered by such violent opposition. In stating the reasons why it appears to me to be desirable to make this change now, rather than to postpone it until the appointment of a much larger number of these gentlemen to high judicial positions, I desire to deal with this question strictly from a practical point of view. I am not going upon this occasion to enter into any examination whatever of any claims which these Native gentlemen may have to exercise this jurisdiction; but, at the same time, I cannot but ask members of this Council to consider whether—I do not speak now of justice or generosity—it is politic, if there be not an overwhelming necessity, for us to impose on these gentlemen restrictions which sensitive men would naturally feel? These men, it must be admitted, are the pick and cream of our Native Civil Service; those who are now in this position, or are about to enter into it, have won their way through a keen competition at home, and secured their position through their own ability. Under Lord Lytton's system, by which, for the future, at least one-sixth of the whole Covenanted Service will in course of time consist of Natives, we shall have to rely more and more, year by year, on the devotion and loyalty of these gentlemen. I think the question of policy is not undeserving of the consideration of this Council; but I pass from it to the practical question. My hon'ble friend Mr. Gibbs has shown you to-night that the idea that administrative inconvenience may arise is not an imagination or a theory; he has pointed out to you what are the circumstances in regard to Mr. Tagore, the Sessions Judge of Kárwár; and he has explained that, if certain railway works which, he says, are likely to commence there are opened, they will bring European British subjects in considerable numbers into that district. If these persons are not tried by the Sessions Judge, they will either have to be sent by sea to Bombay, or have to march 80 or a 100 miles through a district which at many times of the year is very injurious to health. This constitutes a real administrative inconvenience, and it implies, not only an inconvenience to the administration of justice, but also a considerable hardship to the suitors and witnesses concerned. And it is surely clear that, though there is not at the present moment an irresistible necessity for introducing this measure, as Lord Lytton's system developes an irresistible necessity will arise. When you have one-sixth of the Civil Service composed of Natives, it will be impossible to maintain the present restriction. Therefore, what we had to consider was—is it better to wait until this necessity becomes overwhelming and irresistible, or is it better to introduce the system now? I confess it appears to me that it is far wiser, and far more in the true and substantial interests of those over whom this jurisdiction is exercised, that it should be introduced now, when the persons who would obtain the powers are very limited in number; when the circumstances under which they enter the Civil Service insure their ability and character; and when all their proceedings can be carefully watched. Being few in number, it will be easier now than afterwards for

the attention of the Local Governments and the public to be directed to their proceedings; and, being the men they are, it seems to me that they would be likely to set a good example and give a good tone to those who come after them. I hold it, therefore, to be wiser to introduce the measure now gradually, cautiously and tentatively, than to wait till the change is forced upon us by necessity, and the powers which are now to be given only to a few men have to be given suddenly to a very much larger number of Native Civil Servants. This is the ground upon which I thought that the time had come when this change could best be made. The truth is, that the opposition to this Bill is in reality, not so much an opposition to this particular measure, as an opposition to the declared policy of Parliament about the admission of Natives to the Covenanted Civil Service. That policy has been a deliberate policy; it commenced many years ago, and has been enforced steadily from time to time. It is not a policy of my invention or of the invention of the present Government at home or here; it is the policy of Parliament. What does Lord Cranbrook say upon that subject, writing to Lord Lytton's Government on the 7th of November, 1878? He says—

'The broad policy was laid down by Parliament so long ago as 1833, that no Native shall, by reason of his religion, place of birth or colour, be disabled from holding any office; and Her Majesty's gracious proclamation in 1858 announced her will that, as far as may be, 'our subjects of whatever race or creed be impartially admitted to offices in our service, the duties of which they may be qualified by their education, ability and integrity duly to discharge'.'

"And he goes on to say—

'Since that period several of my predecessors in office, and especially Lord Halifax, Sir Stafford Northcote, the Duke of Argyll and Lord Salisbury, have pressed upon the attention of the Government of India that the policy of Parliament, enforced as it was by the Royal proclamation, was not to remain a dead-letter, and two Acts of Parliament were passed to give further effect to it. But, as your Excellency justly observes, all endeavours hitherto to deal with this question on a satisfactory basis have proved unsuccessful. It is gratifying to observe that your Lordship's elaborate treatment of the subject will enable a practical course to be taken, that will prove, it may be hoped, both beneficial to the State and satisfactory to the natural aspirations of the educated Natives of India.'

"That is said, not by me, but by Lord Cranbrook; and I cannot doubt that, if that policy is now applied under the rules laid down by Lord Lytton's Government in 1879, and is carried out as he proposed, an alteration of the law in the direction in which this Bill goes is inevitable at no distant time. The Government of India have not the power, if they had the inclination, which certainly I have not, to withdraw from that policy; and Lord Cranbrook very distinctly tells us that, in his judgment, Parliament will not withdraw from it. Lord Lytton's original proposal was that, when he established a separate Native Service, permission to Natives to compete for the Civil Service in England should be withdrawn. What Lord Cranbrook says on that subject is this—

'But your proposal of a close Native Service, with a limited class of high appointments attached to it, and your suggestions that the Covenanted Civil Service should no longer be open to Natives, involve an application to Parliament which would have no prospect of success, and which I certainly would not undertake. Your Lordship has yourself observed that no scheme could have a chance of sanction which included legislation for the purpose of repealing the clause in the Act of 1833 above quoted; and the obstacles which would be presented against any attempt to exclude Natives from public competition for the Civil Service would be little less formidable.'

"Therefore, it appears to me to be evident that the intention of Parliament has been to admit Natives more and more largely into the Covenanted Service; that steps were taken in 1879, after a considerable delay and frequent injunctions from the Secretary of State, to carry out that intention more fully; and that the result has been, as I have stated, that we have now to deal with a state of things in which, before many years have elapsed, it will be, as I have said, simply impossible, on account of administrative inconvenience, to withhold powers of this description from the higher ranks of the Covenanted Native Service. The Hon'ble Mr. Evans has said that he could not admit the force of the argument that because Presidency Magistrates had power to try Europeans, therefore, similar powers should be given to Native Magistrates in the Mufassal. I admit

a considerable portion of the argument of my hon'ble friend, but he must allow me to say that the fact that Natives of India have been trying Europeans for a considerable number of years in Calcutta and Bombay is a conclusive argument against the theory that Englishmen have a constitutional right to be tried by Englishmen only. No one is more convinced than I am of the advantage of having a case argued before a Magistrate by trained lawyers; and I would not for a moment think of underrating its importance. Nevertheless, I was rather struck with what I saw in a Bombay newspaper this morning. It certainly did seem rather curious, after all that has been said on this subject, to find that certain European gentlemen, composing what is called the Salvation Army, are being tried at this moment in Bombay by Mr. Dossabhoy Framjee. Their religious feelings are very intimately involved in the case which is being tried by that Native Magistrate. I did not intend to have said anything about the past history of this question, because, as I have mentioned before, my main object has been to explain the reasons which have induced the Government to bring in this Bill. But Mr. Evans has spoken with personal knowledge of what was called the compromise of 1872. On that point I would say this. There may have been a compromise between the members of the European community and the members of the Select Committee. Of that I know nothing, although I have not the least doubt that the Hon'ble Mr. Evans has stated exactly what occurred; but it is perfectly obvious that that compromise cannot have been a compromise with the Government; because, if it had been, then Lord Napier of Merchistoun, Lord Napier of Magdala, Sir Richard Temple, Sir George Campbell and Mr. Barrow Ellis could never for a moment have given their support to an amendment inconsistent with it. My hon'ble friend Mr. Ilbert, in the speech with which he commenced this discussion, pointed out that all the safeguards now possessed by Europeans, and all the special privileges now enjoyed by them, were left standing by this Bill, except the single one of being exempted from the jurisdiction of Magistrates who are not European British subjects. This Bill does not touch the rest of these safeguards; and the Government has not the least intention of submitting any proposals now or hereafter, certainly not as long as I am here, with the view of interfering with those privileges. But there is another matter which I look upon as in some respects a more important safeguard, and that is the power of supervision exercised by the High Court over all the Courts below. What would be the result if a Native Magistrate trying an European acted towards him in an unjust manner? If the case came before the High Court, or if they even heard of it, they would be able to call for the proceedings, and the consequence would be to deprive that gentleman of the position which he might have so abused. That is the history of this measure, and of the grounds upon which it was introduced, and of the extent to which it goes. I know very well that a great deal has been said, as is always said when changes are introduced, about this being the thin end of the wedge. I can only say that, so far as this question is concerned, it is not the thin end of the wedge, and that this measure represents the final views of the present Government in respect to changes regarding this portion of the Criminal Procedure Code. Passing from the history of the course we have taken and the motives which have actuated us, I may now state that we are perfectly ready to listen to reasonable remonstrances, to statements of fact and to legitimate arguments. But neither this nor any other Government that will ever exist in India will, I hope, listen to violence, to exaggeration, to misrepresentation and, least of all, to menace. It is perfectly natural that those whose interests are affected by this Bill, that those who would lose under it a privilege to which they evidently attach a great value, should bring their views on the subject before the Government, and should press them earnestly upon their attention. I should be the last man to complain of that being done, and I should be the last man not to give to such representations the fullest and most careful consideration; and those who are animated by the dread, which has been expressed in many quarters, of the results of this measure, may rely upon it that a fair representation of their opinions, supported by good arguments, will be listened to with the greatest attention. It is, of course, true that in this, as in every other, question with which the Government of India has to deal, it is obliged to take a wider view than that confined exclusively to the interest of any single class of the community; but it is also

true that any special class of the community, which is specially affected by any particular measure, has a right to bring its views before the Government, and to expect that those views will be fully and carefully examined. I will not allude on this occasion to the character of a great deal of the opposition which has sprung up to this Bill, or to the means by which that opposition has been to a great extent conducted; I will say nothing of the charges which have been made against myself, or of the systematic misrepresentation of my feelings and objects in regard to this and other measures. I pass that by; but I can truly say that it is a source of deep regret to me and all my colleagues to observe the difference which has in this matter sprung up between the Government and, I admit, a very large portion of the European community, especially on this side of India. I do not know whether anything that I can say will tend to mitigate the bitterness of the controversy or to induce calmness; but if the vehemence of feeling is due in any degree to a misapprehension as to the scope of the Bill or the course which the Government intended to pursue in regard to it, or to a fear that we have ulterior designs which we never have entertained, then it is possible that this discussion may have done good. It is only right that it should be remembered that the Government never had the smallest idea of hurrying this Bill through the Council. They proposed to deal with it deliberately, and to afford the amplest opportunity for the representation of opinion in regard to it. It will be observed that it was before any such representations had reached the Government, and, therefore, before it had been in their power to consider them, that the proceedings which have been adverted to were adopted. This Bill will now, in accordance with the usual practice, be sent to the various Local Governments, and they will have an opportunity of recording their views upon it. These views will be sent up in due course, after careful examination by the Local Governments into all the circumstances of the case, for the consideration of the Government of India; and we shall then give to the observations of the Local Governments and of the public which may have reached us in the meantime, the fullest weight and the most deliberate consideration. I frankly say that with those who desire, if any such there be, to retain the distinction which this Bill proposes to remove, merely because it is a race distinction, I have no sympathy whatever. To arguments which are inconsistent with the declared policy of the Crown and of Parliament it would be contrary to my duty to listen; but to fair reasons, urged in a manner to which the Government can give heed, the ears of myself and my colleagues will always be open on this and every other question. I observe that the opponents of this Bill speak of appealing to the House of Commons. I am the last man in the world to object to such a course being taken. To the decision of the House of Commons both parties to this controversy must bow. I do not think I have anything more to add now by way of explanation of the views of the Government. I have kept myself clear of controversy, because I wish to hold myself perfectly open to consider the arguments adduced on both sides in this debate. If I had thrown myself into this controversy, it might fairly be objected that I had not reserved to myself real freedom to consider those arguments. I have shown that this measure was recommended to the Government by Sir Ashley Eden, the Lieutenant-Governor of Bengal; that its principle has been approved by all the other Local Governments in India, with the exception of that of Coorg; and that it has been very carefully considered by the late Secretary of State for India, Lord Hartington, in Council and sanctioned by him. I have recalled to the recollection of the Council the circumstances in which we stand at this moment, and those in which we shall stand in no distant future, with respect to the position of the Native members of the Covenanted Civil Service. I have pointed out how very limited the immediate effect of the Bill will be, and have stated the reasons which induce me to think that it is wiser to make the proposed change now, when it can be brought into operation gradually and cautiously, than to wait until administrative necessities and justice to suitors compel the Government to introduce it suddenly and extensively. Lastly, I have expressed the perfect readiness of the Government to consider and to weigh any remonstrances which may be made against this Bill, provided they are supported by arguments which

are consistent with the policy of Parliament. The Government do not propose to take any further steps in this matter now, and ample time will thus be afforded for the deliberate examination by Local Governments, by the Government of India and by the Government at home of any representations which may be made to them in connection with this measure."

The Motion was put and agreed to.

SUCCESSION CERTIFICATE BILL.

Major the Hon'ble E. BARING asked for leave to postpone the motion for leave to introduce a Bill to amend the law relating to certificates granted under Act XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*).

Leave was granted.

Major the Hon'ble E. BARING also asked for leave to postpone the introduction of the Bill, and the motion that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* and in the local official Gazettes in English and in such other languages as the Local Governments might think fit.

Leave was granted.

The Council adjourned to Monday, the 12th March, 1883.

R. J. CROSTHWAITE,
Additional Secretary to the Government of India,
Legislative Department

CALCUTTA;
The 9th March, 1883.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

ABSTRACT OF THE PROCEEDINGS OF THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA, ASSEMBLED FOR THE PURPOSE OF MAKING LAWS AND REGULATIONS UNDER THE PROVISIONS OF THE ACT OF PARLIAMENT 24 & 25 VIC., CAP. 67.

The Council met at Government House on Monday, the 12th March, 1883.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.G., G.M.S.I., G.M.I.E.
His Honour the Lieutenant-Governor of Bengal, C.S.I., C.I.E.
His Excellency the Commander-in-Chief, G.C.B., C.I.E.
The Hon'ble J. Gibbs, C.SI.., C.I.E.
Major the Hon'ble E. Baring, R.A., C.S.I., C.I.E.
Lieutenant-General the Hon'ble T. F. Wilson, C.B., C.I.E.
The Hon'ble C. P. Ilbert, C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Rájá Siva Prasád, C.S.I.
The Hon'ble W. W. Hunter, LL.D., C.I.E.
The Hon'ble Sayyad Ahmad Khán Bahádur, C.S.I.
The Hon'ble Durgá Charan Láhá.
The Hon'ble H. J. Reynolds.
The Hon'ble H. S. Thomas.
The Hon'ble G. H. P. Evans.
The Hon'ble Kristodás Pál, Rai Bahádur, C.I.E.
The Hon'ble Mahárájá Luchmessur Singh, Bahádur, of Darbhangá.
The Hon'ble J. W. Quinton.

BENGAL TENANCY BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to amend and consolidate certain enactments relating to the Law of Landlord and Tenant within the territories under the administration of the Lieutenant-Governor of Bengal be referred to a Select Committee consisting of His Honour the Lieutenant-Governor, Major the Hon'ble E. Baring, the Hon'ble Messrs. Ilbert, Reynolds and Evans, the Hon'ble Kristodás Pál, the Hon'ble the Mahárájá of Darbhangá, the Hon'ble Mr. Quinton and the Mover.

He said that the Council were aware of the circumstances under which his hon'ble colleague, Mr. Ilbert, had introduced the Bill on the 2nd of March, and he (SIR STEUART BAYLEY) could only congratulate the Council and himself that his enforced absence from here had transferred to Mr. Ilbert's hands the duty which he had so admirably performed. After the clear and elaborate statement which Mr. Ilbert had made on the 2nd March, as to the necessity for legislating, and on the principles of the Bill, SIR STEUART BAYLEY did not at present propose to say anything more on the subject, but he would reserve to himself the right to answer the objections which may be made in the course of the debate, which objections, he had no doubt, would be numerous. But he had just one word to say pertinent to the motion before the Council. He was at liberty to say that it was the intention of His Excellency the Viceroy to appoint to this Council a representative of the planting interests in Bihár, Mr. Gibbon, and on his being gazetted, and if he agreed, and if the Council agreed, he would be appointed to the Select Committee, and that hereafter, when vacancies occurred in the Council, as would be the case next year, it would probably be expedient to strengthen the Committee by the appointment of

each pargana. This may have been quite possible before the time of the Permanent Settlement, but I doubt if it is possible to do anything of the sort now. It is hardly possible to find two fields in the same village of exactly the same quality of land, and parties will never cease to question the correctness of classification of lands. I know of a pargana where the rate for some of the villages is two rupees, whereas the rate for similar lands in another village is only two annas. Instead, therefore, of deputing officers to draw up tables of rates, would it not be better that the law should fix a certain proportion of the average produce as the zamíndár's rent.

"Now as to the question of transfer of occupancy holdings. The zamíndárs ought to be thankful for getting the right of pre-emption. But it is not always that the zamíndár is in a position to buy occupancy holdings, and in such cases would it not be advisable to give a *khúdkásht* raiyat the right of pre-emption in preference to an outsider, and immediately after the zamíndár? This might in some cases prevent an out-sider coming in who has got no common interest with the villagers, and who does not necessarily care for the good-will of the village community.

"Here I might also mention the fact that though the zamíndárs have been allowed the right of pre-emption, still they are not allowed to buy on the same conditions as raiyats. A raiyat who buys an occupancy holding, and who does not wish to cultivate himself, can lease it to one who cannot acquire rights of occupancy; but if the zamíndár leases out any such holding the cultivator at once acquires rights of occupancy.

"About the survey of *khámár* lands I have to make only a few observations. Such surveys would cost a great deal of money, which the raíyáts or the zamíndárs might eventually have to pay, and even then I do not see what good the raiyats or the zamíndárs are ever likely to get. No doubt it would be a first-rate thing to have proper records-of-rights, but it would be impossible to have proper records of rights by having a mere survey of a village.

"These are some of the observations which a cursory reading of the Bill suggests, but this is not the time to enter into all its details.

"In conclusion I beg leave to make the following observations:—The Bill was originally intended to give relief to the zamíndárs as well as to the raíyáts. Sir Richard Temple and Lord Lytton thought that the zamíndárs should get further facilities for the collection and realization of rents, but the proposed Bill does not give the zamíndárs any facilities for the realization of rents. Now as to concessions to the raiyats I have very little to say. It is the zamíndárs' interest to make any fair concessions to their raiyats. All that a zamíndár needs is a law which secures him his rents and provides him with modes for speedy realization of the same, but I am obliged to say that if the procedure as laid down in the Bill is to become law, the zamíndár's position is sure to be much worse than what it is now, and I can safely state, before concluding, that Bihár zamíndárs are quite satisfied with the existing law, and do not wish for the change contemplated."

The Hon'ble KRISTODÁS PÁL said:—"I wish to begin with a personal explanation, for which I crave your Lordship's indulgence. It may be supposed that, as I have the honour to sit in this Council under your Lordship's orders, with the suffrage of the landholders, it is my duty to look to the interests of the landholders alone. But such is not the case. I cannot divest myself of my natural sympathy with the millions who till the soil and constitute the backbone of the nation. Indeed, I would not be true to myself, to my cherished convictions, and to my humble labours for the promotion of my country's welfare, if I were to shut my eyes to the interests of one party for the sake of the other. All that I want is justice and fair play to both. No good landlord, I submit, my Lord, is blind to the interests and happiness of his tenantry. In fact, rightly understood, the interests of the two are interwoven with those of each other. A prosperous and contented tenantry is a blessing to the landlord and to the country at large. In considering the vitally important question

before us, happily we have not to deal with a *tabulá rasa*, and are not left to our own unaided judgment. Both the landlord and tenant in Bengal have their charter of rights, and if we rightly interpret that charter we cannot go far wrong. This charter is none other than the Permanent Settlement Regulations. I consider it my duty to call the attention of your Lordship and the hon'ble Council to the main points of that charter, and to invite your unbiassed decision upon those points.

"Before I proceed to discuss the Bill, I desire to offer my hearty acknowledgment of the ability, industry and thorough mastery with which the learned Law Member has grappled with this intricate and complicated subject. The Bill is, doubtless, the work of many hands, but he has accomplished his task in a few weeks which might baffle the efforts of many an expert in as many years. But I hope he will pardon me if I say I cannot accept all his conclusions and endorse all the views and opinions he has expressed on the subject. My Lord, the papers on the Bill have been before us for nine days, and I am free to confess that, consistently with my other avocations, I have not been able to give it that close attention which I ought to have given. I am, therefore, likely to make statements and remarks from an imperfect study of the Bill, for which I hope I will be excused. In submitting the Bill to the Council, the hon'ble and learned Law Member reviewed the whole question from the days of the Permanent Settlement, and in following his example I am afraid I shall also have to traverse a wide area. I may be tedious in my statements and observations, but I hope the Council will bear with me kindly.

"I think we ought to consider, in the first place, who are the zamíndárs who come within the scope of the Bill; what was their position originally; what functions did they perform in the administrative and social economy of the country, and how far were they useful to society and to the State? To ascertain the position of the zamíndárs, it is not necessary for me to go back to the ancient history of India—I mean to the days of Hindú supremacy. It is enough for us to know that when the Muhammadans took over this country, they fully recognised the position, the status and rights of the proprietors of the soil. It is true that the revenue demand was variable, but the rights and status of the zamíndárs were not at all interfered with. Before, however, I proceed to point out the position of the zamíndárs at the date of the Permanent Settlement, I will quote here the opinion of an eye-witness of the settlement as to the state of the country when the Permanent Settlement was effected, and the eminent service which that settlement rendered to the national Exchequer. I will read to the hon'ble Council the opinion of Mr. James Pattle, one of the best fiscal officers of the East India Company, who before his retirement held the hon'ble office of member of the Board of Revenue. Mr. Pattle writes:—

'The country brought under the Decennial Settlement was for the most part wholly uncultivated. Indeed, such was the state of the country from the prevalence of jungle infested by wild beasts, that, to go with any tolerable degree of safety from Calcutta to any of the adjacent districts, a traveller was obliged to have at each stage four drums and as many torches; besides, at this conjuncture, public credit was at the lowest ebb, and the Government was threatened with hostilities from various powerful Native States. Lord Cornwallis's great and comprehensive mind saw that the only resource within his reach in this critical emergency was to establish public credit and redeem the extensive jungles of the country. These important objects, he perceived, could only be effected by giving to the country a perpetual land assessment made on the gross rental with reference to existing productiveness, and, therefore, promising to all thos who would engage the encouragement of an immense profit from extending cultivation. Admitting the sacrifice was very great, I think it cannot be regretted when it is considered what difficulties it conquered, and what prosperity it has introduced. For my part, I am convinced that our continuance in the country depended on the adoption of that measure, and that our stability could not otherwise have been maintained. This was my opinion at that time, and it has remained unaltered.'

"This is the opinion of an eye-witness of the Permanent Settlement as to the state of the country when that settlement was effected, and also when it was in operation for some time. And it was his deliberate opinion that the Permanent Settlement enabled the Government of the day to keep the British power in the country. It may be said—and it is sometimes said—that the Per-

manent Settlement was financially a mistake, but in those days it saved the public treasury. The Company's treasury was on the verge of insolvency; their territories were threatened by powerful enemies; on one side an adventurous European rival was plotting, and on the other mighty Native Chiefs were arrayed against the Company; it was then a question of the continuance of English supremacy in the East; on the other hand the land-revenue, on account of varying assessment, could not be regularly collected. It was at this juncture the Permanent Settlement was made.

"Ninety years have elapsed since this settlement was concluded. Within that period we have seen what changes, what commercial and material changes, have taken place, and how the jungle which then covered the land has been removed and cultivation has been introduced; what financial prosperity has since succeeded the insolvency to which Mr. Pattle referred, and how active has been the national industry. I will not say that these results have been achieved wholly through the agency of the Permanent Settlement, but I do not hesitate to say that it has contributed greatly to the consummation of the changes which we now contemplate with so much satisfaction. It is well known that one of the charges brought against the Bengal land system is that it has involved the Government in an unnecessary sacrifice of prospective revenue. But, my Lord, if an examination of the development of the finances of these Provinces were made, it would be seen that in no other Province has the public revenue progressed so satisfactorily as in Bengal, and that whatever sacrifice was made by the Permanent Settlement of the public demand in Bengal has been more than made up by the enormous indirect increase of the revenue from many sources. This was particularly pointed out in the Duke of Argyll's despatch on the Road Cess.

"I now come to the position of the zamíndárs before or at the time of the Permanent Settlement. The name of Mr. Francis is well known in history as one of the colleagues of Warren Hastings in the administration of India. When he was in this country, the question of the land settlement occupied the attention of the Government, and enquiries were set on foot as to the position of the persons who were then known by the name of zamíndárs. Mr. Francis in a Minute, dated 22nd January, 1876, or rather in a note to that Minute, wrote:—

'The inheritable quality of the lands is alone sufficient to prove that they are the property of the zamíndárs, taluqdárs and others, to whom they have descended by a long course of inheritance. The right of the Sovereign is founded on conquest, by which he succeeds only to the state of the conquered Prince; unless, in the first instance, he resolves to appropriate or transfer all private property, by an act of power, in virtue of his conquest. So barbarous an idea is equally inconsistent with the manners and policy of the British nation. When the Moguls conquered Bengal, there is no mention, in any historical account, that they dispossessed the zamíndárs of this land, though it is frequently observed that where they voluntarily came in and submitted to the new Government, they were received with marks of honour, and that means were used to gain and secure their attachment.'

"These were the men whom the British Government, on the first acquisition of this country, found in possession of the land. Mr. Francis admits that the Muhammadan Government always recognized their position and rights, and in fact did all they could to gain and secure their attachment. I do not know whether many members of this Council have read that curious book called, I believe, the 'Four great zamíndárs of Bengal', by Mr. Rouse. It is now out of print, but it is a very interesting and useful book. It contains good deal of information about the Permanent Settlement, about the status of landlords in those days, and gives a very interesting history of the four great families of zamíndárs in Bengal, namely, Burdwan, Dinájpur, Nattore, and Kishnagur. It also gives some account of some minor zamíndárs. I allude to this book only to show that in the days of the Permanent Settlement there were men in possession of large properties or estates, and that they were considered absolute proprietors of the soil. Now, in what light were these zamíndárs regarded by the authors of the Permanent Settlement? Were they regarded as proprietors

of the soil or not? Here is the opinion of Sir John Shore, afterwards Lord Teignmouth:—

'I consider the zamíndárs as the proprietors of the soil, to the property of which they succeed by the right of inheritance, according to the laws of their own religion; and that the sovereign authority cannot justly exercise the power of depriving them of the succession, nor of altering it when there are any legal heirs. The privilege of disposing of the land by sale or mortgage is derived from this fundamental right, and was exercised by the zamíndárs before we acquired the Díwání.'

"I will give an extract from the Minute of Lord Cornwallis, dated the 18th September, 1789. He says:—

'Mr. Shore has most ably, and, in my opinion, most successfully, in his Minute, delivered in June last, argued in favour of the rights of zamíndárs to the property of the soil. But, if the value of permanency is to be withdrawn from the settlement now in agitation, of what avail will the power of his arguments be to the zamíndárs for whose rights he has contended?'

"Again, His Lordship writes:—

'Although, however, I am not only of opinion that the zamíndárs have the best right, but from being persuaded that nothing could be so ruinous to the public interest, as that the land should be retained the property of Government, I am also convinced that, failing the claim of right of the zamíndárs, it would be necessary for the public good to grant a right of property in the soil to them, or to persons of other descriptions. I think it unnecessary to enter into any discussion of the grounds upon which their right appears to be founded.'

"So that Lord Cornwallis was deliberately of opinion that the zamíndárs were the proprietors of the soil, and that, even if their rights were questioned, still, as a matter of policy, proprietary rights should be conferred upon them. The zamíndárs before the Permanent Settlement were not only proprietors of the soil, but they actually exercised powers which legitimately belonged to the State or Sovereign; they levied duties on internal commerce, a power which, as far as I am aware, no private landlord is allowed to exercise in any civilised country. But in those days, as I have observed, the zamíndárs actually exercised that sovereign power. Lord Cornwallis justly held, on grounds of public policy, that such power should be withdrawn from the zamíndárs, and in his Minute, dated 3rd February, 1789, he wrote:—

'I admit the proprietary rights of the zamíndárs, and that they have hitherto held the collection of the internal duties; but this privilege appears to me so incompatible with the general prosperity of the country, that, however, it may be sanctioned by long usage, I am convinced there are few who will not think us justified in resuming it.'

"And so this power was resumed—I do not say unjustly; I admit that it was very properly resumed. But I mention it to show that the zamíndárs not only exercised the powers of landlord, but even, to some extent, the sovereign power. Lord Cornwallis, as the hon'ble Council is aware, fixed the revenue demand at ten-elevenths of the gross rental, and, by way of compensation to the zamíndárs, surrendered the waste-lands to them. The Government has always recognised the right of the zamíndárs to the waste-lands, and the assurance given to them in the days of the Permanent Settlement was repeated in the subsequent Regulations. Thus, I find the following in the preamble to Regulation II of 1819:—

'It appears to be necessary, in order to obviate all misapprehension on the part of the public officers and individuals, * * * formally to renounce all claim on the part of Government to additional revenue from lands which were included within the limits of estates for which a Permanent Settlement has been concluded, at the period when such settlement was so concluded, whether on the plea of error or fraud or on any pretext whatever."

"Section 31 of the same Regulation states that—

'Nothing in the present Regulations shall be considered to affect the right of the proprietors of estates for which a Permanent Settlement has been concluded, to the full benefit of all waste-lands included within the ascertained boundaries of such estates, respectively, at the period of the Decennial Settlement, and which have since been or may hereafter be, reduced to cultivation.'

"I will not allude here to the assumption sometimes made that the waste-lands should be treated in the same way as lands settled at the time of the

settlement. It should be remembered that these waste-lands were howling wildernesses at the time, and that it was left entirely to the discretion of the zamíndárs to settle them in any way they might think proper. To that question I will not advert at present. I have said that the waste-lands were given to the zamíndárs by way of compensation for the exorbitant assessment of the Permanent Settlement. The Council was doubtless well aware that the assessment was so heavy that most of the first zamíndárs, with whom the settlement was made, were literally swept away under its effects. The great house of Nattore, which, I believe, used to pay 52 lákhs of rupees of revenue, was broken up completely under the crushing effects of the heavy assessment of the Permanent Settlement. The house of Dinájpur suffered similarly, and so did the house of Bírbhum and many other families. The Burdwan house was also tottering, and was only saved by the introduction of the patní system. I cannot do better than read to the hon'ble Council the remarks which no less an authority than Sir George Campbell has made on this subject in the Bengal Administration Report for 1872-73. He says:—

'The Government demand was then one which left a margin of profit, but small compared with that given to zamíndárs in modern days. There was wide-spread default in the payment of the Government dues, and extensive consequent sales of estates or parts of estates for recovery of arrears under the unbending system introduced in 1793. In 1796-97, lands bearing a total revenue of sikká Rs. 14,18,756 were sold for arrears of revenue, and, in 1797-98, the revenue of land so sold amounted to sikká Rs. 22,74,076. By the end of the century the greater portions of the estates of the Nadiyá, Rajsháhí, Bishanpur, and Dinájpur Rájás had been alienated. The Burdwan estate was seriously crippled, and the Bírbhúm zamíndárí was completely ruined. A host of smaller zamíndárs shared the same fate. In fact it is scarcely too much to say that within the ten years that immediately followed the Permanent Settlement a complete revolution took place in the constitution and ownership of the estates which formed the subject of that settlement.'

"Now, what do these startling statements show? The Permanent Settlement, as I have shown from a quotation from Mr. Pattle, was intended to benefit the landlords as well as the State. The State derived immediate benefit by the replenishment of the treasury. The landholders, however, at the time suffered extremely. In fact, as this statement shows, most of the original zamíndárs were swept off the face of the earth by the tremendous sacrifices they were called upon to make at the time the Permanent Settlement was established. Most of the present zamíndárs have come in by investing their capital, and they have done so in perfect reliance upon the good faith of the Government.

"I have shown that the waste-lands were made over to the zamíndárs by way of compensation. Now, how were the waste-lands brought into cultivation? My object is to show what functions the zamíndárs have performed in the social economy of the country. The zamíndárs in the first place invited tenants, because in those days it was the land which sought the tenant and not the tenant who sought the land. They established villages at their own expense, and they appointed the village smith, the village barber, the village priest and other members of the village establishment, by giving them rent-free lands. They made takkáví advances to the raiyat for the cultivation of the land; they charged no rent whatever in the first instance, and subsequently levied a progressive rent as cultivation advanced, and in this way they reclaimed the jungle which covered the greater part of Bengal in the days of the Permanent Settlement. You may now go to any part of the country, and you will be struck by the smiling fields and the teeming populations which meet your eye in every direction. But, in 1793, you could hardly go a few miles from Calcutta without drums and torches to keep away wild beasts. Those who brought about these changes certainly deserved the thanks of the public.

"Now, what have the zamíndárs done in other respects? Have they been content only with the introduction of cultivation and the reclamation of waste-lands? No. As population has increased, as cultivation has extended, as civilisation has advanced, the zamíndárs have risen to the requirements of the time, and have also assisted in the execution of public works, in accordance

with the spirit of progressive time. Go through the villages and you will generally find in most of them large tanks. I am sorry to say that tanks now-a-days are not dug with the same zeal as heretofore. But you will find many old tanks dug by the zamíndárs, and there was a double motive in the execution of this work. In the first place, water was necessary for cultivation in times of drought, and, secondly, it was necessary for drinking purposes. The zamíndár wanted to foster the settlement of raiyats, and, therefore, he opened these tanks; he had also partly a religious motive in providing drinking water for the people. As this hon'ble Council knows well, among the Hindús religion supplies a strong impulse for many of their acts, and the digging of tanks was one of these. Then, as the country advanced in prosperity, there was necessity for roads, and the zamíndárs were not remiss in making them. They, in co-operation with their tenants, laid out large sums of money in making roads through different parts of the country. I will give you the example of one district only—the district of Huglí. The list which I hold in my hand does not comprise all the roads made in the district within the last few years, but it gives a good account of what has been done. These roads were made at the time of the Ferry Fund Committees which existed before the Road Cess Committee was constituted. The following is a list of the roads and bridges referred to :—

Names of the Roads and Bridges.	Lengths.	By whom constructed.
Bhastara to Tribany	16 miles	Zamíndár of Bhastara.
Jonye to the Surussutty	8 do.	Ditto of Jonye.
Jonye to Connaghur	7 do.	Ditto ditto.
Biddabatty to Gobindpore . . .	7 do.	Singoor zamíndárs.
Biddabatty to Huripal	25 do.	Zamíndárs and F. F. Committee.
Chinsurra to Dhoneakhally . . .	25 do.	Ditto ditto.
Huglí to Dwarbasiny	12 do.	Ditto ditto.
Pandua to Calna	18 do.	Ditto ditto.
Howrah to Jugutbullubpore . . .	12 do.	Ditto ditto.
Metalling of the road from Serampore to Salkea.	13 do.	Ditto ditto.
The Bally Tension Bridge . . .	...	Ditto ditto.
Two bridges on the Dhoneakhally road .	...	Ditto ditto.
Three bridges at Nosorye, Tribany and Satgan.	...	Zamíndár of Noapara.

"Now, what has been done in Huglí has been more or less done in other districts in Bengal. If the Council will refer to the Famine Report of Sir R. Temple, they will see that the zamíndárs gave, free of cost, all the lands required for roads and tanks which were constructed during the scarcity of 1873-74. In fact, the question arose whether the Government could take over lands free of all consideration, and the learned Advocate General was of opinion that it could not. But the zamíndárs in a body refused to receive a pice for the lands they gave for those purposes.

"Now, have the zamíndárs done anything for education, in the way of establishing or promoting the establishment of schools? I have been just reading the last report of the Director of Public Instruction, Bengal, and I find that

the total amount of private contributions was nine lákhs last year, including both endowments and private subscriptions. The statement is this:—

	Government Institutions.	Aided Institutions.	Unaided Institutions under regular inspection.	TOTAL.
	Rs.	Rs.	Rs.	Rs.
Endowments	65,015	64,332	32,957	1,62,304
Subscriptions	14,870	6,19,205	1,11,838	7,45,913
GRAND TOTAL .	...	...	...	9,08,217

"Any one who knows the sources from which these contributions usually come will admit that the bulk of it came from the pockets of the zamíndárs. In the same way, in 1881-82, the total expenditure on dispensaries was Rs. 3,74,000, and the subscriptions from the Native community amounted to Rs. 1,20,000, and it may be also said that the bulk of this money came from the zamíndárs. I ought to have said, while noticing the support which the zamíndárs have been giving generally to education, that some of the most munificent benefactions in the cause of education have come from the zamíndárs. Take, for instance, the magnificent Tagore Law Professorship Endowment at a cost of three lákhs of rupees, which was founded by the late Hon'ble Prasanna Kumar Tagore, the illustrious uncle of my friend Mahárájá Sir Jotíndra Mohan Tagore. My friend the Diggiapattí Rájá has given, I believe, Rs. 1,20,000 for the Rajsháhi College; munificent donations have also been given for the Ravenshaw College at Cuttack, and for the Berhampore and Kishnagur Colleges by other zamíndárs; and I say it with much pleasure that one of our hon'ble colleagues, the Hon'ble Durga Charan Láhá, has given Rs. 50,000 towards the cause of education. I could mention many more names, but it is not necessary. I cannot, however, refrain from alluding to the many magnificent benefactions given by my friend the Mahárájá of Darbhangá, and I think it is not too much to say that the zamíndárs generally have not been deaf to the call on their purses in the cause of education. Then there was one branch of education which the zamíndárs from the first encouraged with the greatest liberality—I mean Sanscrit learning. I believe hon'ble members were aware that rent-free lands to the extent of more than a crore of rupees were assigned by the zamíndárs, of their own free-will, for the support of men professing Sanscrit learning. The great house of Nadiyá gave away in this way, I believe, the bulk of its property. These were voluntary contributions. But the zamíndárs were also subject to compulsory contributions for public purposes. I may mention, first, the dák cess. It is not necessary for me to go into the question of the dák cess, whether the zamíndár was liable to render postal service or not. It is enough, for my present purpose, to say that they were required to pay the cess. Then the zamíndárs were also liable to pay the road and public works cesses, and with them their raiyats are also liable, and the amount thus contributed by the zamíndárs annually comes to 35 lákhs of rupees. Then the zamíndárs construct embankments voluntarily, for the protection of their raiyats, and they are also liable to an embankment cess for those embankments which are maintained at their expense by the State. They are also called upon to perform certain official services. Whenever troops march through their estates they are required to provide supplies for them; whenever public officers pass their way, they also do their best to send provisions to them; whenever heinous criminal offences were committed within the limits of their estates they were required to report the same to the Police. In the days of the salt monopoly of the East India Company, the zamíndárs were made liable for the illicit manufacture of salt on their estates. Whenever statistical or economical enquiries are made the zamíndárs are required, through the Police and the Magistrates, to make reports, and

whenever any great public work has to be done their services are put into requisition. Take, for instance, the census operations. I appeal to His Honour the Lieutenant-Governor to say whether the Government could have carried out the census work at double the cost which was incurred if the zamíndárs had not freely offered their own services, and those of their servants, in furtherance of this great work. And they perform these public services ungrudgingly; they fully acknowledge that property has its rights as well as its duties. Then, again, the public seem to think that they have a claim on the purses of the zamíndárs for all public purposes, for whenever there is any call for money, who is it that is first appealed to? It is the zamíndár. Take, for instance, the calls made here for contributions for the relief of the sufferers from the Crimean war, the Scotch famine, the Irish famine, the Lancashire distress, and many other funds. If you examine the list of contributions, you will find that zamíndárs have always headed it; even for race stands, agricultural shows and other objects their purses have been taxed. The district officers do not hesitate to appeal to the zamíndárs whenever they have a public object in view. And in times of difficulty the zamíndárs have loyally, willingly and cheerfully placed their services at the disposal of Government. Take, for instance, the Sepoy Mutiny. Happily, the flame of the Mutiny did not extend to Bengal Proper, but it did spring up in parts of Bihár, and the Government have heartily acknowledged the loyal services which the Bihár zamíndárs rendered in that crisis. In Bengal, too, they did some service in their own way by supplying elephants and other things for which the Government applied to them. Even in fiscal emergencies the Government has not hesitated to appeal to the zamíndárs, relying on their loyalty, and with the greatest alacrity they have responded to the call. I am personally acquainted with the circumstances of one case. In 1878, there was a financial pressure, and Sir John Strachey, who was then the Finance Minister, wanted temporary accommodation to make the two ends meet. He did not desire to raise a public loan, he simply wanted a temporary accommodation, and he spoke to Sir Ashley Eden and asked him if he could secure some lákhs of rupees in that way. I was taken into confidence, and I know that several of my zamíndár friends willingly came forward with the required help. So whenever there has been any occasion for help, and whenever any appeal has been made to the zamíndárs, they have not hesitated to render every assistance in their power to the State. I may also cite the Minute of Sir R. Temple as a testimony to the services which the zamíndárs rendered to their tenantry during the great famine of 1873-74. I wish I had before me a copy of that Minute to read to the Council a few extracts from, but I am sorry to say I have not got it. I dare say that Minute has been read by most hon'ble members, and they doubtless recollect that the zamíndárs, as recorded in that Minute, remitted lákhs of rupees of their rent, suspended the payment of rent, gave takkáví advances, and afforded charitable relief to their tenantry in that crisis without any grudge, and Sir R. Temple justly complimented the zamíndárs by saying that they had nobly redeemed their character as landlords. Apart from these facts, I may tell you that, whatever disputes may here and there exist or arise between zamíndárs and raiyats, the raiyat generally looks up to the zamíndár as a protector against oppression and injustice. If a policeman troubles him he goes to the zamíndár; if a private individual assails him he goes to the zamíndár; if there is a quarrel between the raiyat and his brother, his sister or his uncle, he goes to the zamíndár for an amicable settlement of the quarrel. In fact, whenever the raiyat is in difficulty he looks up to the zamíndár for assistance, for advice, and for arbitrament. But while the zamíndár performs these functions I hope the Council will kindly bear in mind that the zamíndár does not get all the profits from the land in the shape of rent. The road cess returns show that there is a long chain of sub-infeudation in the country, and that the profits from land are largely intercepted by middlemen. When the Permanent Settlement was first made these middlemen were not in existence, except the dependent taluqdár, the istimrárdár and the mukarrarídár. But as I have shown, the pressure of the assessment was so severe that even the big house of Burdwan was tottering, and for his sake the patní system was introduced, and from that time sub-infeudation commenced. A large number of tenure-holders sprung up under

this system, and they gradually intercepted the profits from the land. I do not say that this is to be regretted, for the more wide-spread are the profits from land the better for the country, but this fact should be borne in mind, because it was generally thought that all the profits from land were monopolized by the zamíndárs. On this point Sir R. Temple, in the Administration Report of Bengal, for 1875-76, wrote:—

'The material advancement of the sub-proprietors, the raiyats and the peasantry in Eastern Bengal has been mentioned with satisfaction on former occasions. A remarkable illustration has been afforded by the detailed inquiries which are being made for the valuation of the lands in the deltaic district of Bákirganj. It appears from the road cess returns that the rent-roll payable to the intermediate tenure-holders is often twelve, twenty or fifty times the rent paid to the superior landlord. It seems probable that not less than a crore of rupees (assumed as equal to one million sterling) are annually paid in rent in this district, and that the value of the agricultural produce of the district can hardly be less than five millions sterling annually, and may be much more. The returns, moreover, while they show the prosperous condition of the tenure-holders and other middlemen, show also how the profits of the land are slipping out of the hands of the zamíndárs, who have permanently alienated their interests in the soil, and, in many cases, have fallen into the position of needy annuitants.'

"So that the zamíndár did not monopolize the profit from the land which constituted rent.

"Now, I have gone to this length to show who the zamíndárs were, what functions they performed in the social and administrative economy of the country, and what services they have rendered to society and to the State, only with a view to impress upon the members of this hon'ble Council the propriety of showing some consideration to men who were so useful to the country. I do not believe that those who perform such important functions will not receive due consideration at the hands of this Council in dealing with the law of landlord and tenant. If they have performed such useful and beneficent functions, have they no claim to your generous consideration; and are they not entitled to have their rights duly recognised by the State and the legislature? The hon'ble and learned Law Member, in introducing the Bill, said that the zamíndárs were in no sense absolute proprietors of the soil; that, according to the definition of owner in certain English Statutes, he apprehended that the zamíndárs were no better than managers or trustees or limited owners of the land. I will, with your Lordship's permission, read one short extract from the hon'ble member's speech. He said:—

'In the first place, the term, as applied to land, has no technical meaning in English law, and if you were to ask an English lawyer what were the rights in the soil of a proprietor of land, he would probably tell you that you were using loose and popular language, and would beg you to make your meaning more precise and clear. In the next place, the term was freely applied to the zamíndárs of Bengal and other persons of the same class in Regulations and other official documents of a date anterior to 1793, and, therefore, could not possibly be taken as indicating or, to use a technical term, connoting rights created at that date. And, thirdly, the term, though, as I have said, it has no technical meaning in England, has acquired a very definite meaning in the settlement literature of British India. It means, in those parts of India which are not permanently settled, the person who, whatever may be his rights on the soil, has the right of having a settlement made with him, the person, namely, whom, for purposes of land-revenue, and for those purposes only, the Government find it convenient and advisable to treat as owner or proprietor of the land. Such a recognition, of course, is not inconsistent, and was never supposed to be inconsistent, with the existence of any number of other rights in any number of other persons. All such rights are simply left outstanding. The use of the term proprietor in this sense is closely analogous to the use of similar terms in English statute-law. Here, for instance, is a definition of owner taken from a recent English Act, the Public Health Act of 1875:—"Owner means the person for the time being receiving the rack-rent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rack-rent."'

"I appeal to this hon'ble Council to consider whether, when Lord Cornwallis and Sir John Shore effected the Permanent Settlement, they understood the words 'proprietor of the soil' in that sense. I have already read to the Council extracts from the Minutes of Sir John Shore and Lord Cornwallis, giving their opinion on the status of the zamíndár at the date of the Permanent Settlement, and I will now confine myself to the one point raised

namely, the legal position of the zamíndár. I dare say the hon'ble and learned Law Member will acknowledge the high authority I am going to cite. I allude to the opinion of Lord Lyndhurst,—Vol. I, Moore's Indian Appeals, p. 348—

'It is to be gleaned from these Regulations that the proprietors of lands in India had an absolute ownership and dominion of the soil, that the soil was not vested generally in the Sovereign, that proprietors did not hold it at the will of the Sovereign, but held the property as their own. * * * I think it is impossible to read those articles without coming to the conclusion that the zamíndárs and taluqdárs were owners of the soil, subject only to a tribute, and that it was the object of the Regulation to make that tribute fixed and permanent.'

"My Lord, I am no lawyer, and am, therefore, bound to accept the interpretation of the law as it may be given by the learned Law Member; but, in the face of this opinion from no less an authority than Lord Lyndhurst, I hope I may be excused if I refuse to accept even the high authority of my learned friend. If Lord Lyndhurst holds that the zamíndárs are the actual and absolute proprietors of the soil, I appeal to the Council to consider whether many of the provisions contained in the Bill are consistent with that reading of the law. For, if I understand the Bill aright, it proceeds wholly on the assumption that the zamíndárs are not owners of the soil, and, therefore, they must submit to a redistribution of property, as it were, under the operation of the proposed law. From 1793 to this day, the zamíndárs have been recognized by the Government over and over, by solemn Regulations and Acts, and also in solemn State papers, as proprietors of the soil. Even Act X of 1859 did not do away with the material incidents of proprietary right, though it recognised the occupancy-right of the tenant under the twelve years' rule; it did not take away the right of enhancement of rent, of eviction of the raiyat, and many other rights inherent in an absolute proprietor of the land. But, after the lapse of ninety years, the zamíndárs are now told, by no less an authority than the learned Law Member of your Excellency's Council, that they are not proprietors of the soil, that they were hitherto labouring under a huge delusion, and that they must prepare their minds to surrender their rights as soon as they can, that there is another class waiting to participate in the land with them; that in fact there is to be a redistribution of the landed property. I hope this hon'ble Council will seriously consider the effect of these propositions, for if I read the Bill aright it amounts to this.

"Now I come to the necessity for legislation. I at once concede that there is necessity for legislation. There has been for many years necessity for legislation. I regret much that it has taken the Government so long a time to give that relief which both the zamíndár and the raiyat have stood much in need of for so many years. From 1871 Government has been promising to simplify the law for the recovery of rent. It is well known to this Council that it was no part of the obligations of the zamíndárs to collect the road cess and public works cess for the Government. But Sir George Campbell, when he imposed the road cess, succeeded in getting the assent of the zamíndárs to collect the cess on behalf of the Government, on the understanding that the law for the recovery of rent would be simplified without delay. The zamíndárs had felt the delay in the recovery of rents as a great grievance, and they said that if the Government would give them the *quid pro quo*, they would undertake the duty of collecting the cesses. It is to be borne in mind that the zamíndárs received no remuneration whatever for the collection of the cesses either by way of percentage or in any other form; and I do not know whether any commercial community would undertake such a duty without charging commission of some kind. But the zamíndárs did not take any remuneration. They were only buoyed up by the hope that the law for the recovery of rents would be simplified. When Sir George Campbell left the arena no change was made. He made promises, but no change was effected. He made inquiries and intended to do something, but nothing was done. Then came Sir Richard Temple. He, too, saw the propriety of changing the law of procedure for the recovery of rent. He also prepared a draft Bill, but nothing was done. Then came Sir Ashley Eden. During the first two years of his rule he was very active in this

matter. He actually caused a Bill to be introduced into the Local Council, but that Bill was dropped on the plea that the whole rent-law should be dealt with. From that time rose the cry for a general revision of the rent-law. Heretofore, the complaints were about the recovery of rent and the settlement of rent, but now came the cry for a general revision of the rent-law, a comprehensive revision of the substantive rights of landlords and tenants. Against such a general revision the zamíndárs protested. There was not the faintest echo from the raiyats in any part of the country to the cry raised by the Government that there should be a general revision of the substantive law. And yet the Bengal Government thought it necessary to appoint a Commission to prepare a draft Bill for the general revision of the rent-law. The Commission was fairly constituted, and I must do them the justice to say that they performed their work with great intelligence, ability and zeal. But, my Lord, I cannot help saying that the Bengal Rent Commission did not work in the way in which Commissions of a similar kind worked in England, and, as far as I am able to judge from the papers submitted by them, they have not given sufficient data for the conclusions arrived at by them. They made no statistical enquiries; they made no local enquiries; they sat in their own chambers; they called for official reports, and from the depth of their own consciousness they evolved their theories and propositions. Ransack their reports, ransack the voluminous literature which they have produced, and find out if you can any information as to what extent evictions were resorted to in this country. That was one of the first propositions they were charged with enquiring into. It was said that evictions were on a large scale resorted to in Bengal; but where were proofs in support of such a statement? They ought to have given some figures showing the current of evictions district by district; but where were they? On the contrary, is it not a fact that evictions were rarely resorted to by the landlord, and that the Courts were most reluctant to order eviction? Then there was the question of the transferability of occupancy tenures. On this point have the Rent Commission given any details? Of course, they say that this right is recognized in some parts of the country; but where are the facts and figures? Were not the records of the Courts open to the Commission? and could not they give facts and figures, extending over some years, to show that to this extent the custom has prevailed?

"Now, with regard to the enhancement of rents. Is it a fact that the enhancement of rents is going on under the provisions of Act X of 1859? It is generally believed that these provisions have brought enhancement of rent to a deadlock. I, for one, would have been glad to receive some statistics on this point—how far enhancement has been stopped by the present provisions of the rent-law; how far the rates have been altered, that was to say the rates at which the rent was paid before and is now paid; in what proportion rents have been increasing, and so forth. Enquiries of this kind have been lately made in some districts for the collection of tables of rates; but the papers produced by the Rent Commission offered little information on the subject. I think that if a Commission of this kind had been appointed in England, they would have given fully the facts and figures on which their conclusions were based.

"But the Rent Commission of Bengal, I am sorry to say, did not furnish us with such facts and figures as would fully bear out their own conclusions and opinions. That Commission, I believe, was appointed with the view of securing to the Bengal raiyat what were popularly called in England the three F's. Now, it is worthy of consideration whether the three F's, consistently with the economic conditions of this country, have not already the fullest operation here. Fixity of tenure. The twelve years' rule, under Act X of 1859, has practically given fixity of tenure to the bulk of the agricultural population of this country. Some estimate it at ninety per cent. I cannot of course be positive about the figure; but, from all I have seen and heard, I hold that the right of occupancy in Bengal is enjoyed by the vast majority of these tenants. In Bihár, too, though the raiyat does not fully appreciate the right, the right is practically enjoyed by the raiyat as appears from the report of Mr. Finucane, and it is for the Council to consider how the occupancy-right in Bihár is to be secured by law. The fact remains that it is already in operation. Fair rent. Now I invite hon'ble

members to enquire and say whether the rents now levied in Bengal are not fair; whether the raiyats in any district now pay rents which may be called rack-rents, I mean in any district in Bengal Proper. So that you have now fixity of tenure, and fair rent. As for the third F, free sale, I admit that it is not common; that the custom obtains only in some districts, and that there even it is not fully recognized. It is a question whether the right of free sale should be fully recognized in the interest of the raiyat, and whether it would be quite consistent with the rights of landlords. I will return to this question hereafter.

"I now come to the Bill itself. I have already said that the Bill has been prepared with great ability and care, but I do not quite understand the primary object of the Bill. Is it to prevent dispute and litigation and to promote peace and harmony amongst zamíndárs and raiyats by reasonable, fair and equitable provisions, or is it to redistribute rights in land, to promote and foster litigation, and set class against class? I should be very sorry to believe that the authors of the Bill had the latter object in view. I repudiate any such notion; but at the same time, when I read the Bill and contemplate its tendencies, I cannot help feeling that, however opposed such a tendency may be to the views and wishes of the hon'ble authors of the Bill, it will be practically difficult to control that tendency of the Bill, so long as the provisions contained in it are allowed to have full play. I was in hopes that it would be in my power to propose a compromise which might be acceptable to both zamíndárs and raiyats, and thus to contribute in some way to the promotion of that peace and harmony on which I lay great stress. But the present Bill, I am sorry to observe, is so one-sided that I cannot entertain any hope of proposing any such compromise. Indeed, there could be no compromise without concession on both sides, but the Bill leaves little room for compromise. I do, however, entertain the hope that when the Bill will be considered in Select Committee, with the light of public criticism and public representations, the Committee will take into consideration outside views, and deal with an even hand with both classes which are interested in and affected by it. After giving, as I have said, rather an imperfect perusal to the Bill, I find that its tendency is to drive both the raiyat and the zamíndár into Court at every stage and to foster litigation all round. In the first place, it is proposed to make a distinction between *khámár* and raiyatí land. Now, as far as Bengal Proper is concerned, I can say that there has been made no attempt whatever to absorb raiyatí land into *khámár* land. The enquiries which I have made on the subject have satisfied me that the absorption of the raiyatí land does not apply to Bengal Proper, nor has there, I believe, been any complaint on the part of the raiyats that they cannot obtain land from the zamíndár because he has absorbed the raiyatí land into *khámár* land. When such is the case, is it desirable to throw the country into the ferment of expensive and harassing litigation, by ordering a survey and measurement and registration of these lands? I believe the most important principle of legislation is, that it should be made to meet the actual needs of the country. Now the question is this, whether there is any actual necessity for the measurement, survey and registration of these lands in Bengal. Well, if the power is meant to be permissive, then it is not intended to apply it to Bengal Proper, because such necessity does not exist here.

"Then comes the question of occupancy-right. Now it is not my intention to go into the history of that question. That history has been repeated times without number, and the question has been discussed threadbare. It is enough for my purpose to recognize the position that Act X of 1859 gives the right of occupancy to the raiyat who holds the same land for twelve years consecutively. I accept that position. I have already said that the occupancy-right has already extended to the majority of raiyats in Bengal, and the question is, is it necessary to extend this right further, and to give a construction to the law which would practically give the raiyat the right to claim all land as occupancy holdings, provided he occupies any one spot for twelve years? The present law is, that the right of occupancy shall accrue upon the same land. The provision of the proposed Bill is, that the right of occupancy shall accrue upon all lands which a raiyat might hold in the same village, or estate, if he

has twelve years' possession of any particular plot; so that the effect would be that the raiyat who might hold two cottahs of land in village A for twelve years will thus acquire the right of occupancy in two hundred bighás of land in villages B, C and D, though he might have had possession of the same lands for only three or four months or years. I say the extension of the right of occupancy in this form is not consistent with the principles of the rent-law of 1859, nor consistent with the proprietary rights of zamíndárs. It has been said that this provision has been rendered necessary by the recourse some zamíndárs have to shifting raiyats from plot to plot, from land to land, in order to destroy the accrual of the right of occupancy. But, as far as Bengal Proper is concerned, I am not aware of a single instance in which the zamíndár has sought to defeat the right of occupancy in this way. Those who have written on the subject, including no less an authority than Sir George Campbell, have readily admitted that this practice is not known in Bengal Proper, and yet it is to be extended to Bengal Proper under the present Bill. Now, I have said that this Bill will drive the raiyats and zamíndárs to Court at almost every step. How do I establish my position? If a raiyat is allowed to acquire an occupancy-right by the accumulation of time, if he holds different plots of land at various periods, there will be so many disputes about the calculation of periods that nothing will be practically decided without recourse to Courts.

"Then comes the question of rent. In every case the settlement of rent will be practically subject to litigation. Whether it is settled by the Court or by a special revenue-officer, it will be a legal proceeding in some form or another. Nothing can be done, as the system has been devised, by private arrangement between the zamíndár and raiyat. If the zamíndár and raiyat come to a private understanding and enter into a contract, they must go to the revenue-officer as the keeper of their conscience. If they don't come to a private understanding, they must go to Court. So they cannot act as free agents or free men; they must have recourse to litigation.

"Next comes the question of the realization of rent. Of course, if there are arrears, there must be litigation, and so on through all stages, even in matters of minor dispute. We will have, if I may be permitted to observe, a Pandora's box in the name of peace and harmony.

"I have said that the practical effect of this Bill will be the redistribution of property. If any one will carefully read through the Bill, he will see that it takes away some of the most important incidents of proprietary right. In the first place it abolishes the right of contract as regards occupancy-right. Now, what is the ground upon which this extreme proposition is based? The hon'ble and learned Law Member has produced what he thought was a horrible *kabúliyat*, and asked the Council to consider whether the legislature could conscientiously protect such a thing. I have not seen the original of that *kabúliyat*, but will consider it in the form of the translation in which it is given in the statement of the hon'ble member. I have compared it with the *kabúliyats* and *pattás* given by Government in *khás* estates, and also with the form of *kabúliyat* which the Government had at one time held up as a sample for landlords, and which the Government used to sell to the general public. I do not know whether that form is now for sale, but I find, from a notification by Government in 1875, that a form of *kabúliyat* was printed and sold for public use by the Government, and in comparing this form with the condemned form which the hon'ble member has laid before the Council, I find that there is not very material difference, except upon one point. Now, I will briefly dwell upon this subject. The first point in the *kabúliyat* to which the hon'ble member took objection was the monthly instalments. He said that 'monthly instalments were oppressive. They drive the raiyat to the money-lender before the harvest, and they enable zamíndárs to worry the raiyats by bringing suits every month, and saddling the raiyat with costs.'"

His Honour THE LIEUTENANT-GOVERNOR enquired whether this form was issued from the Bengal Office.

The hon'ble speaker stated that they were sold in the Bengal Office.

The MAHÁRÁJÁ OF DARBHANGÁ said that they were circulated in Court of Wards' estates.

The speaker continued:—"Now, if the hon'ble member had enquired, he would have known that Government revenue was formerly paid in monthly *kists*, and throughout the country rent was paid in monthly instalments, and that, subsequently, it was divided into quarterly instalments, and that in many parts of the country it is still paid in monthly instalments. So that this is no new condition, but even the payment of quarterly instalments might drive the raiyat to the money-lender, as he could not always pay before the harvest.

"I should mention that these monthly *kists* have been recognized in this country for a long time, and that even Suvankar, the Cocker of Bengal, has given, in one of his arithmetical tables, the calculation of monthly *kists*, so common was the practice. In the Government *kabúliyat*, I find that the first condition was 'in default of instalments, monthly interest at the.....per centum you shall pay.' Now this is important, because it is a sample pattá which is prescribed by the Government, and the first condition is, that if there was default so much interest must be paid. It is not necessary to go into this point at any length, but I will observe that Regulation XI of 1793, admitting this usage, imposed these *kists*, and severe penalties for default were prescribed in section two. I have said that the same condition is prescribed in the Government form of pattá. But what does the Government do in its own estates? What is the practice of Government in its own *khás mahál*? I will read some passages from the forms of leases prescribed by the Board of Revenue:—

* * 'pay the Government revenue *kist* by *kist*, according to instalments noted at the foot of this engagement. If I fail to pay the full amount of one instalment, or a part thereof, due within the year, Government shall have power, on its own authority, without the interference of Courts, to cancel any lease even before the close of the year'—*Vol. II, page 131, Form 16.*

"So here we see that the Government tells the tenant, 'if you fail to pay monthly revenue *kists*, the Government will have power, on its own authority, and without the interference of Courts, to cancel your lease even before the close of the year.' Then, again, Vol. II, page 138, 'pay the revenue *kist* by *kist* according to the kistbandí noted at the foot of this agreement.' So that the horrid private pattá which contains the condition about monthly instalments is not singular or *unique*.

"The next point is, 'if I fail to pay rent on a due date, I will pay interest at the rate of two pice in the rupee until the date of realization.' The remark of the hon'ble member was that thirty-one per cent. was charged in the *kabúliyat* he had read out. It was well known that this was what was usually considered or called a penal sum, and that the Courts never decreed that rate of interest, the law allowing only twelve per cent. per annum, and such a clause, the hon'ble member knows, finds place in bonds in England; here the zamíndár charges interest if the raiyat wilfully defaults. What does the Government do in its own *khás mahál* if the raiyat defaults? Here is a provision in Form 25, page 141: 'If I default * * * I may be ejected at the will of the Collector.' The zamíndár is content with interest, which the Court will never decree at more than twelve per cent. per annum; but under the form quoted, the Government, in case of default, has taken power to eject a tenant without the intervention of the Courts.

"I would ask the Council to compare the terms of the *kabúliyat* taken from Government raiyats on Government estates upon the same points. I would refer to the Board's Rules again: the tenant engages—'I shall not ask for any abatement of revenue in consequence of inundations, drought or any other calamities, and no such requests if preferred will be listened to.'—*Board's Rules, Vol. II, page 131, clause 6, Form 21.* Again, 'I shall not raise any objection to the full and punctual payment of the said revenue on the score of inundations, &c., or other accidents affecting the value of the said land or the outturn thereof, and I shall raise no claim to abatement on any such account.'—*Form K, clause 5.* It will be seen that no deduction is to be allowed to a

Government tenant even in case of diluvion. And these were *kabúliyats* which the Government obtained from tenants on their own estates.

"The next objection is that the raiyat is not allowed to enjoy the value of trees, or to cut down trees. Now, similar rules will be found in Government Forms. Thus—'I shall not sell or cut any trees on the estate whether bearing fruits or not.'—*Form 16*. I presume that the raiyat who executed the private *kabúliyat* must have been a new comer; and, if he was a non-resident raiyat, I do not see any reason why the proprietor should be debarred of the right of making a contract with him that he should not be entitled to the right of occupancy. If this is considered objectionable, landlords will be able to accomplish their object in a different way, that is to say, by taking terminable leases for, say, ten years, and renewing the same at the end of ten years; and so defeat the accrual of the right of occupancy. In this *kabúliyat*, I see the zamíndár has gone straight to his work; but I hope it will not be supposed that, because there may be some instances of new raiyats who may enter into an engagement claiming no right of occupancy, for the simple reason that they have no just claim to such right, therefore, the right of occupancy is not allowed to accrue in this country. On the contrary, as I have shown, since Act X of 1859 came into operation, the right of occupancy has extended to some ninety per cent. of the raiyats throughout the country. But how does the Government meet such cases in the *kabúliyat* which it takes from its own tenants? The tenant declares 'in the event of my dying during the continuance of the term of this engagement, the Government shall have power to settle the mahál with any one.'—*Form 16*. In this private *kabúliyat*, the right of the heir is recognized, but in the Government instrument that right is not recognized. Then the hon'ble and learned Law Member comments on that clause of the *kabúliyat* in which the raiyat engages to pay the road and other cesses. Of course, I do not know what the words in the original *kabúliyat* imply, but no Court of Justice will decree the full amount of the road cess against the raiyat. As regards the dâk cess, it is payable by the zamíndár. But if the hon'ble and learned Law Member will refer to section 12 of Act VIII of 1862, he will find that private contract in this matter is allowed, so that the zamíndár is perfectly within the law if he makes a contract between himself and his raiyats providing that they would pay their share of the dâk tax. With regard to trees, I find that only one-fourth of the value of the wood is to be given to the raiyat under the private *kabúliyat*. What is the provision in the Government *kabúliyat* on this point? Form 16 says, 'I shall not cut or sell any tree on the estate whether bearing fruit or not.' So under this stipulation the Government tenant will not get even one-fourth of the value of the wood, which the zamíndár allows under the *kabúliyat* before the Council. Then there is Form 22 in which an option is given to the raiyat to enjoy the right of cutting trees or not, and in Form 23 it is stated: 'I am entitled to take and enjoy the fruit only of the existing trees or of such trees as may be planted by me.' Comments on these conditions are superfluous. I shall not pursue the subject further. I have shown that the conditions contained in the *kabúliyat* quoted by the hon'ble and learned Law Member are much the same as those in the Government sample Form advertized in 1875, and that the conditions of the *kabúliyats* taken by Government from its own raiyats contain similar, if not harder, conditions. If such is the case—if Government itself, in its own wisdom, has thought fit to prescribe such *kabúliyats*—I ask whether they are of such an outrageous nature as not to justify the protection of the law. I submit that, if it be considered right and just that the raiyat and zamíndár may enter into a contract with regard to the disposal of land on permanent or temporary lease, that the raiyat may enter into a contract in all other matters affecting his own interests, and that a coolie in Bengal may enter into a contract for the sale of his labour in the wilds of Assam, I do not see any good and valid reason why the zamíndár and raiyat should be debarred of the right to enter into a contract of this kind, because the matter relates to the right of occupancy in the soil. Surely, this matter ought to be dealt with in the same way as other matters of contract affecting the rights of landlord and tenant.

"I now come to the question that the proprietor has a natural right to elect his own tenant. This right is admitted by the hon'ble and learned Law Member. He says that, in order to secure that right, we propose to give the zamíndár the right of pre-emption; that is to say, if the occupancy-tenant should wish to sell his tenure or to mortgage it, the zamíndár shall have the right to pre-emption in regard to it, and that, if the zamíndár and the raiyat should fail to come to any settlement as to price, they shall go to the Court for such settlement. Here, again, both the zamíndár and raiyat are driven into Court for the settlement of their differences. Now, apart from that, let us consider what will be the economic effect of a provision like this. If, as I have ventured to show upon the authority of Lord Lyndhurst, the zamíndár is the actual and absolute proprietor of the soil, is it right that, when one class of his tenants should leave his land, he should be made to pay a fine for securing his proprietary right in the same? Why should he be made to purchase what ought to belong to him as a matter of right? Even admitting, for argument's sake, that the zamíndár's power of ownership is limited, that he must not absorb into his own *khámár* what is raiyatí—admitting that to be the case—I ask, why should the zamíndár be compelled to purchase his own land again in order to exercise the right of ownership over it? I think that the provision contained in the Bill of the Hon'ble Mr. Reynolds was more equitable. While conceding the right of transferability to the raiyat, he would not take away from the zamíndár the right of proprietorship; I believe his Bill provided that no occupancy tenure should be transferred without the consent of the zamíndár. I say such a provision would not clash against the leading principles of the Bill, while it would secure the right of the zamíndár to elect his own tenant. I leave it to the Council to imagine what the position of a zamíndár would be if this provision were put into force by the raiyats in any large number of cases. Take, for instance, the case of a person purchasing an estate for two lákhs of rupees on a calculation of so much annual return. Well, he calculates the interest and makes a simple money investment upon a certain percentage of profit. He holds this estate for five years. After that, when this Bill becomes law, a number of occupancy-tenants come in and tell the zamíndár, 'We have sold our holdings to such and such persons for so much; if you will pay us the price we will sell the lands to you, otherwise you must forego your right.' Of course the zamíndár, in order to keep away inimical tenants, would, if he had the means, buy up the tenures. But what is his position? He has, firstly, paid the full price for the estate, and now he must pay again for these lands if he wishes to exercise the right of pre-emption. What return does he get? *Nil.* As the Bill provides, he must let out the land at the same rate and, perhaps, even less. Now, I wish to ask the Council whether such a provision is fair, just or equitable.

"With regard to enhancement of rent, I confess I do not clearly understand the very complicated provisions which have been made on this subject. As far as I understand the Bill, it appears that, as a rule, the maximum of rent shall not exceed twenty per cent. of the gross produce. Tables of rates are to be prepared, and, if applicable, they shall be the guide. If not, the proportion theory shall, to a certain extent, be resorted to, and then the maximum of twenty per cent. should be adhered to, that was to say, as regards occupancy-tenants. Now, as regards the tables of rates, I hope the enquiries made by the Bengal Government will satisfy the Council that it will not be worth while to go to the trouble and expense of preparing these tables of rates. I am indebted to the courtesy of His Honour the Lieutenant-Governor for copies of the reports of Mr. Finucane and Bábú Párbati Charan Rai. In the report of Mr. Finucane, this is the conclusion he arrives at with reference to the tracts he enquired into:—'The rate varies from four to one hundred and odd.' So that the ascertainment of a uniform rate of rent which will apply to all holdings is impracticable, and yet the Bill contains provisions for an enquiry into rates, and I believe the cost of the enquiry is to be borne by both zamíndárs and raiyats. I do not see the necessity for such an enquiry, nor the justice of charging the zamíndárs and raiyats with the cost. With regard to the enquiry of Bábú Párbati Charan Rai, I find that he reports that the rate of rent has not varied from the days of the Permanent Settlement in certain tracts which he has enquired into.

Now, here is one proof also of the moderation with which the zamíndárs in some districts have treated the question of rent. Then, as to the twenty per cent. maximum, it is quite true that I, in another capacity, had recommended twenty-five per cent., but I confess I am not prepared to accept the recommendation of His Honour the Lieutenant-Governor for twenty per cent. The proportion of rent in Bengal has varied very much. At the time of the Permanent Settlement, as I find from a Minute by Sir John Shore, it varied from one-half to three-fourths of the value of the gross produce. At the present day, the proportion has been considerably reduced by rise in the value of produce. In the Eastern districts, I am inclined to think this proportion of rent may not be unacceptable, but in the Western districts it will be strongly objected to. There, I believe, the proportion is not less than one-third. In Bihár, it is much higher, and varies, I believe, from seven to nine annas in the rupee. Therefore, the twenty per cent. maximum, if sanctioned by law, will be a source of gross injustice to many zamíndárs in these parts. When I recommended twenty-five per cent. I did not for a moment suspect that the Government would go lower down, and I observe that the Rent Commission accepted my recommendation. But it is necessary for me to add that most of the zamíndárs did not agree with me, and did not consider twenty-five per cent. fair or just. The rules which provide for the settlement of rent of the ordinary raiyat, or the tenant-at-will, will be practically a bar to enhancement. The rules have been so framed that either the ordinary raiyat or the tenant-at-will will become, by force of circumstances, an occupancy-raiyat, or will leave the land with both his pockets or hands full. Now, from the time of the Permanent Settlement, a broad distinction had always been made between *khudkásht* and *paikásht* raiyats, that was to say, between resident raiyats, and tenants-at-will. But this Bill makes away with that distinction by importing certain ideas which are entirely foreign to the land-system of this country, and which I cannot help saying have been apparently borrowed from the Irish land-law. In the first place, the ordinary raiyat or tenant-at-will, according to the customs of this country, is not entitled to compensation for improvements. This question of improvements is a very large one. In this country, if a raiyat wishes to make any substantial improvements for the purpose of cultivation or manufacture, he generally takes a long lease, and secures his right, and then makes the improvements he needs. That has been the general practice. Ordinarily few improvements are needed for the cultivation of the soil. Nature has been so bountiful that if you merely scratch the soil in many parts of the country mother earth will yield her fruit. But this Bill introduces the novel idea of compensation for improvements. Now, what are the improvements that a tenant-at-will generally makes? I should feel obliged if any hon'ble member present would kindly enlighten me on this subject. As far as I am aware, irrigation is very little needed in Bengal Proper. Embankments are here and there needed, but for the most part they are made by the zamíndár. Would you consider those little ridges which separate the fields one from the other as improvements? and would you like to give to the raiyat a new handle for litigation, by inciting him to find out improvements which had never before entered his unsophisticated mind? I again say that, by bringing in this chapter of improvements, you will simply drive the raiyat and the zamíndár to the chapter of litigation. That is one of the weapons placed in the hands of the tenant-at-will to use against the zamíndár, because, if the zamíndár must pay for improvements before he can enhance the rent of a tenant-at-will, he must perforce desist.

"But this is not all. If the tenant-at-will should refuse to pay the enhanced rent, the zamíndár must pay him ten times the amount of the proposed annual enhancement by way of compensation for disturbance, or forego the right. The tenant-at-will will, by this unnatural process of law, become an occupancy-tenant.

"Now, what right has the tenant-at-will, who is a creature of to-day or yesterday, to demand from the zamíndár a compensation for disturbance as it is called? He will have the right to relinquish the land if he chooses, but the zamíndár will not have the right to eject him. This provision I say is open to

three objections. In the first place, the rich zamíndár, who alone can pay the value of improvements and compensation, will be subjected to so much fine if he wishes to keep the land in his own possession and prevent the tenant-at-will from acquiring occupancy-right. The poor zamíndár, who cannot pay, will be obliged to put up with this forced occupancy-right, and in every case the zamíndár and the raiyat will be driven to litigation. Now, it is well known to the hon'ble Council that, as matters go, there are abundant causes of dispute between the different classes of the agricultural community, and is it right and proper that this new idea should be forced into the unsophisticated minds of our raiyats? The practical effect of the provisions I have commented upon will be the destruction of proprietary right, and the deterioration of private property.

"I have already alluded to the distinction which has been made between *khámár* and *raiyatí* land, and I only wish to draw your attention to the provisions of the Permanent Settlement Regulations, giving the zamíndár the right of disposing of his lands, with the exception of dependent, istimrárí and mukarárí, in the best way he might think fit. Section 52, Regulation VIII of 1793, says:—

'The zamíndár, or other actual proprietor of land, is to let the remaining lands of his zamíndári or estate, under the prescribed restrictions, in whatever manner he may think proper; but every engagement contracted with under-farmers shall be specific as to the amount and conditions of it; and all sums received by any actual proprietor of land, or any farmer of land, of whatever description, over and above what is specified in the engagements of the persons paying the same, shall be considered as extorted, and be repaid with a penalty of double the amount. The restrictions prescribed and referred to in this section are the following.'

"This clause to my mind proves two things. In the first place, the zamíndár had an absolute right to dispose of all lands, except independent taluqs, in the best way he could, and, in the next place, it recognised the right of the zamíndár to enter into contract. In fact, from 1793 to 1859, I find repeated enactments in which the zamíndárs are exhorted to enter into contracts with the raiyats, and if the interchange of pattás and kabúlyats had been regularly enforced by Government, there would by this time have been such a record-of-rights as would have prevented the necessity of over-riding contracts.

"Now, I have said that rack-renting, as it is generally understood, is not known in Bengal Proper. If the country had been so rack-rented as has been represented, there could not have been so much prosperity as the Government has from time to time testified there is. I find that Sir Ashley Eden, on assuming the reins of the Bengal Government in 1877, made a tour through the Eastern districts, and in a memorable speech he then said:—

'Great as was the progress which I knew had been made in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well-fed, well-clothed, free to enjoy the full benefit of their labours, and able to hold their own and obtain prompt redress of any wrong.'

"Similar testimony with regard to other parts of Bengal is, I believe, to be found in the Administration Reports of the Bengal Presidency. I need hardly remind the Council that, when Sir Ashley Eden left the country last year, he, in defence of his excise policy, made this broad statement, that the development of the excise revenue was the best test of the growing prosperity of the agricultural population; and I ask whether this prosperity could go on if the raiyats had been handicapped, or if they had been depressed by rack-renting, as is sometimes alleged? I am afraid I have trespassed upon the time of the Council very long, but I hope I may be permitted to notice a few other points.

[At this stage the Council adjourned for lunch, and on their re-assembling the hon'ble member continued his remarks as follows:—]

"My Lord, when I closed I had alluded to the question of rents in Bengal. I said that it could not be rightly urged that, as far as Bengal Proper

was concerned, it was rack-rented. Now, it may be interesting to enquire what is the condition of the peasantry in the other Provinces of India, and such an enquiry may throw considerable light on the present subject. I hold in my hand a pamphlet on the effects of periodical revision of the land-tax in India. It is from the pen of a well-known Indian publicist and sincere well-wisher of this country, Mr. John DaCosta, who was senior member of the late firm of Messrs. Ashburner and Co., and with whom I have had the privilege of being long associated in the work of Indian reform. Mr. DaCosta, in referring to the Madras Presidency, says:—

'Beginning with Madras, the last Administration Reports from that Presidency show that the arrears of revenue, annually recovered by the sale of land, steadily increased from Rs. 31,880 in 1865, to Rs. 665,091 in 1879. This rapid rise, showing the growing difficulty of collecting the land-revenue, indicates the impoverishment of the cultivating classes.'

"Then, with reference to Bombay, he says:—

'If we next turn to Bombay we find that, in consequence of unsatisfactory reports regarding the collection of the land-revenue in that Presidency, the Secretary of State has quite recently sent out orders authorising a reduction of twenty per cent. in assessments in the Sholapur district. That the assessments there have long been excessively oppressive may be seen from a Minute of the Government of Bombay indicted about seven years ago, in which it is recorded that 'the Government had read with much concern the opinion expressed by the Collector of Sholapur as to the undue pressure of the revised rates, in consequence of which a large quantity of land had been put up for sale in default of revenue, much of which found no purchasers.'

"A reference to the Bombay Revenue Commissioners' reports will show, moreover, that 10,880 acres of cultivated land in Surat, and 25,035 acres in the fertile Province of Guzarát, were abandoned in 1872 and 1873, when the revised assessments were enforced; and that, while the unfavourable year 1871-72 was followed by two exceptionally propitious seasons, the depression of the people, as manifested by the relinquishment of their fields, had continued. From the same causes the revenue collected in the Northern Division in 1874 decreased, although the rates had been enhanced; and official reports of the same period from Puna state that 'the amount of land-revenue unrecovered was very considerable, and that, in order to realise the amount actually recovered, it was found necessary to sell up many occupancies.' Further, a memorial was addressed to the Viceroy in 1875 by some 3,000 landholders in the Bombay Presidency, complaining that the demand made upon them for land-revenue was out of proportion with the productive value of the land; and that, owing to their inability to satisfy it, many had been deprived of their estates, cattle and other moveable property, while their tenants and cultivators were on the verge of starvation. These reports materially help to account for the appalling severity of the famine which shortly afterwards devastated the Bombay Presidency, showing, as they do, that the very life-blood of the people had been sucked in the process of raising the land-revenue.

"Next, I turn to the North-Western Provinces. You know how harassing a process a settlement work is, and how much the people suffer as long as its operations go on. Mr. DaCosta quotes the following from an official memorandum of Sir Auckland Colvin, who writes:—

'Settlement-operations have now, in one district or another, extended over nineteen years. By the time the settlement of Banda falls in and is disposed of, twenty-six years will have elapsed from the date on which the two first districts were placed in the hands of a Settlement-officer. Others were begun twelve years ago and are not yet sanctioned; one of these is not even yet completed. These facts are significant to those who know what the settlement of a district means; the value of property depreciated, until the exact amount of the new assessment is declared; credit affected; heart-burning and irritation between landlord and tenant; suspicions of the intention of the Government; hosts of official underlings scattered broadcast over the vexed villages. . . Nothing can equal the injury inflicted by a slow uncertain settlement, dragging its length along, obstructed by conflicting orders, harassed by successive administrations, and finally threatened with annihilation at the moment when it seemed to have nearly finished its course. Little wonder that we hear of the land needing rest.

'Who have hitherto been connected by so kindly a bond in one of the greatest political dangers of the day. * * * The Commissioner of Allahabad, adverting about the same

time to the depressed condition of the Futtehpore district, stated that 'the imposition of a ten per cent. cess in addition to the ordinary land-tax fell heaviest on the villages which were least able to bear it, that many villages broke down, and many more were threatened with ruin.' * * * From the District Collector's report it appeared, moreover, that many landlords who had failed to pay up the revenue were imprisoned; their personal property was sold, and their estates were attached for arrears of revenue. * * *

'The Collector of Cawnpore, referring to the revised settlements, stated:—'The margin left for the cultivator's subsistence is less than the value of the labour he has expended on the land. This district has the benefit of water-communication by both the Ganges and the Jamna; it is intersected by the East Indian Railway, and partly traversed by the Ganges canal; yet the land is only worth five years' purchase, and the state of the average cultivator is one of hopeless insolvency and misery.' The Lieutenant-Governor, in his Administration Report published in 1873, said that, while travelling, he was forcibly struck with the wretched condition of the Lallatpur district 'in which many estates were so depopulated, and so much land had fallen out of cultivation, that the assessment has become very severe.'

"The extracts which I have read from this pamphlet unmistakeably show what is the condition of the tenantry in the other Provinces of India. One fact is well known to this hon'ble Council. Relief Acts have been enacted by this Council for the benefit of agriculturalists of the Dekkhan and of Jhánsí; but happily things have never come to anything like that state in Bengal, so as to require exceptional legislation. On the contrary, as I have shown from the words of Sir Ashley Eden, and as is evident from the annual Administration Reports of Bengal, the prosperity of the agricultural population of this Province has gone on uninterrupted, from year to year, since the revolution of prices commenced in 1853, or since the Crimean war. Now, if the condition of the tenantry of Bengal is so prosperous, it cannot be reasonable to suppose that the land-law has pressed upon the springs of industry. I think, my Lord, it would be interesting if we could know what proportion does the revenue levied upon the peasantry of Madras, Bombay and the North-Western Provinces bear to the value of the gross produce of the soil. Is it one-half, or one third, one-fourth, or what? I have no accurate information on the subject, but an enquiry into the matter may clear up doubts which exist upon the subject. I, however, know this much, that while the enhancement of rent has come to almost a deadlock on private estates in Bengal, under the working of the proportion theory of the High Court, the enhancement on Government estates in *khás maháls* has been going on of late years at a tremendous rate. I find that within the last few years—I cannot give the exact period—there has been an increase of rent in Chutiá Nágpur estates from hundred to three hundred per cent; in Tipperah I hear that the increase is much higher, and matters are much worse in Chittagong. In Jalamati, in the district of Mednípur, the increase has, I believe, been from sixty to eighty per cent. On the other hand, the Government expenditure on improvements in the *khás maháls*,—I believe it was stated in an official paper sometime ago—has been very limited. And while I speak of the Government estates, I think it right to point out that, while the Government goes on increasing the rent on its own estates, and while the Government imposes such hard *kabúliyats* upon its own tenants, the Government enjoys peculiar facilities for the settlement and recovery of its own rents. It is well known that the Government employs almost the same agency as the private zamíndár employs for the management of its estates. The tahsíldárs of Government estates generally come from the same class that supplies the *náibs*, *gumáshtas* and other ministerial officers of the zamíndár's private establishment. But while the Government manages its own estates through these men, it is not content with the ordinary powers which a private landlord enjoys; takes advantage of exceptional powers for the realization of its own rents. Now, it ought to be borne in mind that the Government exercises a prestige, by virtue of its position, which the private landlord can never command. First, there is always a sort of intimacy between the Police and the revenue establishment of the Government, which is unseen by the outside public, but which is fully felt by those coming within the operations of the revenue establishment. Notwithstanding all these advantages, which the private landlord cannot claim, the Government has a summary procedure for the settlement of rent, and a summary procedure for the recovery of rent. Now, I ask, if the Government considers it necessary to have recourse to all these

exceptional methods for the management of its own estates, is it not manifestly its duty to give similar facilities to the private zamíndár, who is bound to pay in the revenue under the stern sunset law? That is to say, if the zamíndár fails to pay in revenue before sunset on a particular day, he is liable to be sold out at once. Therefore, is it not fair that the zamíndár should have the same facilities for the settlement and realization of rent? It may be said that the Government cannot place the same confidence in the servants of the zamíndár as it can in its own servants. Now, the Bill prescribes certain forms in which the zamíndárí accounts are to be kept and receipts are to be given, and if, with all these safeguards, the zamíndár's servants should still commit fraud and wrong, cannot they be checked by the imposition of penal damages on the zamíndárs in any case in which they may abuse their powers? If, by taking such precautions, the procedure for the settlement and recovery of rent could be assimilated, whether the demand be for Government or for the private landlord, is a point deserving of the fullest consideration of this Council. With regard to the realization of rent the hon'ble and learned Law Member has said that it is not practicable to secure the ends of justice by a summary method. Now, the Government has, from the days of the Permanent Settlement, always recognised its duty to be to help the zamíndár in the realization of rent. So long ago as 1795 the Government thus declared:

'Government not admitting of any delay in the payment of the public revenue receivable from proprietors and farmers of land, justice requires that they should have the means of bringing their rents and revenues with equal punctuality, and that the persons by whom they may be payable, whether under farmers, dependent taluqdárs, raiyats or others, should be enabled, in like manner, to realize the rents and revenues from which their engagements with the proprietors or farmers are to be made good. Increased punctuality on the part of landholders in the discharge of their duties was now expected, and justice required that they should have the means of obtaining the rents due to them even more now than in 1795.'

"From 1793 to 1859, there was a double procedure, a summary procedure and a regular procedure through the Civil Courts, and it was left to the option of the landlord and tenant to have recourse to either. This subject was thoroughly discussed when Act X of 1859 was passed into law, and Sir Barnes Peacock then raised the question that the Civil Courts ought to be invested with jurisdiction, and he proposed to take away the jurisdiction of the Revenue Courts. The majority of the members of the Council were opposed to the change, and Mr. Currie openly declared that, if the jurisdiction was transferred to the Civil Courts, he would rather abandon the Bill than submit to it. Sir Henry Ricketts, Mr. Harington and other members were also opposed to it. Well, the law was passed leaving the jurisdiction to the Revenue Courts intact; but, in 1869, Sir William Grey carried out the transfer of jurisdiction to the Civil Courts. I by no means take objection to this transfer of jurisdiction. I think that, with their legal training, the Judges of the Civil Courts are admirably fitted to decide questions of right and title which are involved in the trial of rent-suits. But, if it be not deemed desirable that the jurisdiction should again be transferred to the Revenue Courts, surely the Government ought to consider whether the procedure cannot in some way be simplified. The proposals made by the hon'ble and learned Law Member will not remove the complaint of delay to any material extent. Now, knowing the origin of the proposal for a change in the land-law, namely, the complaint of the landlords of delay in the trial of rent-suits, and remembering also the promise which Sir George Campbell gave when charging the zamíndárs with the collection of the road cess for the simplification of the procedure for the realization of rent, and the repeated efforts made by successive Lieutenant-Governors in that direction, I think it is very disappointing that the zamíndárs should be told at this time of day that they cannot expect a summary procedure for the realization of rent, and that it is not practicable to do so consistently with the ends of justice. I have just now told you that in the *khás maháls* Government has a summary procedure of its own, and, surely, what is good for the *khás maháls* should be equally good for the estates of private landlords. If justice is not sacrificed by the summary procedure applicable to the *khás maháls*, why should it be held that justice will be sacrificed by extending the same procedure to private estates? If there be any loop-hole through which the ends of justice may

be defeated, by all means stop those loop-holes; but do not summarily reject the prayer of the landlords for a summary trial of rent-suits.

"I think, my Lord, I have touched upon the salient points of this Bill. There are many other points on which I cannot dwell at present for want of time. Perhaps they may be best considered in Select Committee; but there is one other point I should like to notice. Whatever difference of opinion may exist as to the different provisions of this Bill, I am glad to say that I am at one with the hon'ble and learned Law Member upon this, that we take our common start from the Permanent Settlement Regulations. I believe his object is to bring back the landlords and tenants in Bengal to the *statu quo* which existed at the time of the Permanent Settlement, and I should be very glad to see it restored. In fact, I look upon the Permanent Settlement Regulations as the Magna Charta of the rights of zamíndárs and raiyats, and I would earnestly wish that that charter should be respected by both parties.

"The two main questions which underlie the scheme of legislation before us, are, what is the position of the resident raiyats and of the tenants-at-will, and what are the rights of the zamíndárs?

"Upon these two important points I will, with your Lordship's permission, read two extracts: one from Harington's 'Analysis', and the other from a Minute of Mr. Seton-Karr, late a Judge of the High Court. I find these passages in Harington's 'Analysis', pages 422-23, Volume 3:—

'Those who cultivate the lands of the village to which they belong, either from length of occupancy or other cause, have a stronger right than others, and may, in some measure, be considered as hereditary tenants; and they generally pay the highest rents. The other class cultivate lands belonging to a village where they do not reside; they are considered as tenants-at-will; and, having only a temporary, accidental, interest in the soil which they cultivate, will not submit to the payment of so large a rent as the preceding class; and, when oppressed, easily abandon the land, to which they have no attachment."

"It will thus be seen that there was a broad distinction drawn between the *khudkásht* and *paikásht* raiyats, and that, in the days of the Permanent Settlement, the former paid more than the latter. Again, he says:—

'It would be endless to attempt the subordinate variations in the tenures or conditions of the raiyats. It is evident that, in a country where discretion has so long been the measure of exaction, where the qualities of the soil and the nature of the produce suggest the rates of the rents, where the standard of measuring the land varies, and where endless and often contradictory customs subsist in the same district and village, the task must be nearly impossible.'

"In other words there was no fixed law or custom for the determination of rent, which was left entirely to the discretion of landlord and tenant. With regard to the rights of the landlords, Mr. Justice Seton-Karr, to whom I have alluded, does not take an exaggerated view. This is his rendering of the Permanent Settlement Regulations on this subject:—

'The zamíndár, at first sight, appears certainly possessed of very high privileges and powers. He is at liberty to impose rents on every bíghá of land included in the area on which the revenue for which he is responsible is assessed. He can, *proprio motu*, and without having recourse to an action at law, dispossess all persons who set up rent-free grants of a date subsequent to December, 1790. The lands of all raiyats who die without heirs, or who abscond, revert to him. He has the undoubted privilege of levying and assessing rents at a higher rate on the better qualities of land, and on some of the more valuable kinds of produce. His title to demand rents from tenants who are mere occupiers without any title, is, it has been judicially held, barred by no length of time, not even by sixty years' abstinence from demand, inasmuch as the mere liability for rent is held to be a constantly recurring cause of action. As regards his distinct proprietory right in some of the very products of the land, there is, in all the ordinary pattás which the zamíndár issues to raiyats, an invariable restriction against the cutting of trees by the raiyat, which might even seem to imply that the right to the timber and the fruit trees belongs, not to the raiyat, but to the zamíndár. Tanks are not usually dug, nor are new roads cut, without his permission; and the former are sometimes excavated at his expense. This is one of the few instances in which I have known zamíndárs lay out any money on the land. The motive, however, is generally a pious one. The theory that the rent-bearing area of the estate is not to be reduced without his permission is, in this and other instances, namely, in the excavation of tanks and the formation of roads, openly recognised. The zamíndárs' right to rent includes not only agricultural produce, leviable in kind or in money, but rents from fisheries in running streams and in marshes; from the actual produce of the forest; and from the very droppings of the trees.'

"This is the interpretation of the Permanent Settlement law by a learned Judge of the High Court, who was by no means a friend of the zamíndár, and I ask whether the rights and privileges which the Permanent Settlement Regulations conferred on the zamíndárs are respected in the Bill before us. I ask whether, while professing to restore the *statu quo ante*, which existed at the time of the Permanent Settlement, my hon'ble and learned friend has not practically gone in the opposite direction. This is not the first attempt which officers of Government have made to legislate in a direction not quite consistent with the guarantees of the Permanent Settlement. But the Government has always scrupulously respected the solemn compact entered into by it with the landholders of the country. In 1819, I find the Government, through no less a personage than Mr. Holt Mackenzie, himself a high authority on the Revenue law of Bengal, Secretary to Government, declared as follows, in a letter, dated the 22nd of April, 1819.

'But it is the firm determination of Government to maintain inviolate the rights and privileges bestowed on the zamíndárs by that settlement, notwithstanding any errors or abuses that may now be discovered to have been practised, and although the profits of any one from his estate should be many lákhs and his jama only a few rupees, yet Government will on no pretence break its agreements.'

"In the words of Mr. Holt Mackenzie I appeal to your Lordship, and I am confident that when the whole question is considered by your Lordship and this hon'ble Council, the rights and privileges conferred and guaranteed by the Permanent Settlement, both on the zamíndárs and raiyats, will be preserved intact and inviolate. I observe that, at the present stage, the Bill is to be referred to a Select Committee, and I confess I do not quite understand my position with respect to the Bill. I have said there is necessity for legislation on the subject, at the same time, I have denied the necessity for a general revision of the rent law. On the other hand, I see that the Bill, in its skeleton form, has received the assent of the Government of Bengal, the Government of India and Her Majesty's Secretary of State. I see that the Bill, as laid before the Council, contains provisions which are repugnant to the principles of the Permanent Settlement, and which I, therefore, consider it my duty to oppose. But the question is whether, the Bill having already received, as regards its main principles, the assent of Her Majesty's Government, it will be open to the Select Committee to consider those provisions which constitute the leading principles of the Bill, and whether the Government will be prepared to make any changes in the substantive part of the Bill, when, by the rules of the Executive Council, which require the previous assent of the Secretary of State to any project of legislation, the members of this Council are practically precluded from considering any fundamental principles of a Bill so sanctioned. I, for my part, do not see any advantage, so far as these main points are concerned, of referring the Bill to the Select Committee.

"Of course, as regards details, the Select Committee will be the proper body to settle them. Be that as it may, I take it that when a Bill of this momentous nature is submitted to public criticism, the Government will not decline to consider any representations or suggestions which may be reasonable or just, though such suggestions may be opposed to their previous conclusions. I feel grateful to your Lordship that arrangements have been made for giving a wide publicity to this Bill, and for inviting public opinion upon it; but I think the public ought to receive an assurance that their criticisms and representations will not be thrown away, because the leading principles of the Bill have already been discussed and determined upon by the Government of India and the Secretary of State. If the Select Committee be tied as it were hand and foot in regard to the fundamental principles of the Bill, then public discussion will be of little advantage, for whatever the public may say or write, and however reasonable their suggestions may be, the Select Committee will not be at liberty to make material alterations in the Bill.

"And now, my Lord, in bringing to a close my wearisome address, for which I apologize to the Council, I venture to express a hope that, as this is a measure of the greatest importance to both landlords and tenants in this Province, the

like of which had never before, I may say, engaged the attention of the legislature since 1793, that this hon'ble Council will not seal with its sanction this Bill, without giving to it a patient, attentive and full consideration, and that it will not consider the object of the Bill as merely an attempt to adjust the relations between landlord and tenant, but also as a matter involving deep economic problems, as a matter involving the sacred question of the plighted faith of Government, and as a matter involving the prosperity and happiness of sixty millions of the population of Bengal."

The Hon'ble MR. EVANS said :—" I do not propose to detain the Council at any great length on this question, and I am glad to find that the Hon'ble Mr. Kristodás Pál is at one with me on at least one subject, and that is the necessity for legislation. I do not think that anyone who has seriously and attentively considered this subject, and has seen how matters were going on, can help feeling that there is a necessity for legislation. When it is found, as I myself have found, that the Law Courts have come to a dead-lock, and that they can do nothing with the cases for enhancement and settlement of rents that come before them ; that such enhancements are introduced by illicit means, where the zamíndárs are strong and the raiyats weak, and that just demands are resisted where the zamíndárs are weak and the raiyats strong, then it is evident that a very serious state of things has arisen—a serious state of things for the Government of the country, and a serious state of things for the landlords themselves. The mass of the raiyats in this country are ignorant people, as a rule, incapable of combination, except on a very small scale, although they have begun to show, in some parts of the country, that they are learning the advantages of combination, and can combine in an effectual manner against the landlords. If you find, on the one hand, the landlords beginning to use other than legal pressure to enforce their claims, and the tenants beginning to combine to resist, by means other than legal, those claims, you have a state of things which might, if left alone, develop into a serious danger. We all know there is nothing more troublesome or difficult to manage, when once it has begun, than an agrarian agitation, and, therefore, I think that, in the interests both of the landlords and the raiyats, legislation of some kind is clearly necessary.

" The landlord has great difficulties in enhancing and settling his rents, and difficulties of various sorts in the collection of them. Therefore, as everyone seems agreed on the necessity for legislation, the question really resolves itself into one of the length to which legislation should go. The hon'ble member who last spoke has said that this matter was formerly discussed, and it was felt there was necessity for some legislation for the benefit of the zamíndár, and that successive Governments found themselves unable to give the relief wanted for various reasons. He also said there were two points on which legislation was required, namely, for the recovery of rent, and the settlement of rent. But there, my Lord, is the hitch. How are you to settle the rents unless you get at the rights of the parties ? And that is why each Lieutenant-Governor found himself unable to settle the rents. They could not settle the rents until they found some proper method of settling them, and they could not give the zamíndár summary power to recover rents till it was settled what the rents were. The zamíndárs, no doubt, would be glad if they could have a summary procedure, which enacted that the tenant was to be sold up for whatever the zamíndár considered to be his rent. But it was impossible for a Government which had the charge of all these millions of raiyats to grant that boon—a boon which might in the end turn out to be an exceedingly fatal one to the zamíndár himself. Therefore it is that Commissions have been issued, and all this mass of evidence before us now has been collected. I quite agree that the work of these Commissions is wanting in statistics. I cannot, however, go with my hon'ble friend as regards the want of statistics about the question of transferability, because we find pages 365 to 373 all taken up with divers transferable tenures, and the districts in which they are transferable and the number of transfers which are registered. There are a certain number of valuable statistics in regard to transfers ; on other points there are no statistics. This is a great disadvantage. But this is not to be imputed to any fault of the Commission, because, as a

matter of fact, there was no means of procuring these statistics. The statistics as to the occupancy of the lands are to be found nowhere except among the zamíndárs themselves, and if there is any body which can give these statistics, it is the Zamíndárs' Association. Well, now, this being so, the question has been forced before the Government, after careful consideration, how are rents to be settled? And here I may observe that my hon'ble friend Mr. Kristodás Pál appears to assume, with regard to the great bone of contention, the position of occupancy raiyats, that Act X of 1859 has practically accorded that right to a large proportion—he thinks ninety per cent.—of the tenants of Bengal. If that is so, there can, as already stated, be very little reason for extending it further. But what is the fact?

"If ninety per cent. of the tenants in Bengal have got the occupancy right, the fact remains that they cannot prove it, and it would be ruin to most of them to try to prove it. Now, of course, if you get a class of men and give them certain rights, but place them in such a position that, having those rights, and knowing that they have them, yet they are unable to enforce them, there arises a very lamentable position. If a man has a right and cannot press it, what will he do? If there are many of them, they will create disturbances. Therefore it is that, looked at from this point, the Bill appears to be a Bill, not for overturning the Permanent Settlement, but for securing to the ninety per cent. of the raiyats in Bengal some means of getting the benefit of this right of occupancy declared by Act X, and being able to assert it. I saw in a letter not very long ago, in one of the newspapers, a statement by a zamíndár that most of the raiyats on his estates had morally a right of occupancy. That is a curious expression. It means they had got it, but had not got it; and that, practically, is no doubt the state of affairs described by my hon'ble friend to-day. There is the moral possession of a right of occupancy, unaccompanied by an actual or fructuous possession of it. Now, if this is the state of the case, it is not really so great a blow to the zamíndárs as we have been led to suppose, to pass a law by which the difficulties of proof should be minimized, by which the onus of proof should lie less heavily on these tenants, and by which they may be able to get a more effectual enjoyment of this already existing moral right. I understood my hon'ble friend the Mahárájá of Darbhangá to say that, as a matter of fact, he thinks it would not be a bad thing that raiyats should have some sort of fixity, and I think that is the feeling of a great many zamíndárs. If they could get a fair settlement of their rents, and get rid of all the litigation in which they are at present involved, they would not look upon such extension of the right of occupancy as is given by the Bill with any great alarm. Now, this being the case, we are invited by my hon'ble friend to consider this matter as if it were some interference with the Permanent Settlement, and the first thing he asks us to consider is the position of the zamíndár and raiyat, and he lays claim on behalf of the zamíndárs to what he terms the actual property of the land, and his case, as I understand it, is that, antecedently to the Permanent Settlement, the zamíndárs were absolute owners of the land; that they were subject to payment of revenue to the Government, but that they were absolute owners, and that this right was not then created but confirmed, and exists to this day, and that Act X of 1859 was a serious interference with that right. I cannot agree with that view of the matter. As regards the position of the zamíndárs before the Permanent Settlement, I would refer to a Minute of Lord Cornwallis.

'Under the former practice of annual settlements, zamíndárs who have either refused to agree to pay the rents that have been required, or who have been thought unworthy of being entrusted with the management, have, since our acquisition of the Díwání, been dispossessed in numberless instances and their lands held khás, or let to a farmer; and when it is recollected that pecuniary allowances have not always been given to dispossessed zamíndárs in Bengal, I conceive that a more nugatory or delusive species of property could hardly exist.'

"Well, it was so; it was a delusive possession of property. However, I think it is quite clear that, whoever they were, they were not absolute owners, even taking it from the point of view as between themselves and the Government. But I do not really care to discuss that matter, because, whatever was their position as between themselves and the Government before the Permanent

Settlement, it is clear that, as between themselves and the Government, the Government did give over this right of making any further demands upon them and constituted them, so far as Government was concerned, absolute owners. That was the position in law. I have no doubt at all that a very large number of them were hereditary zamíndárs, and many of them were members of the old princely houses, who had originally (as ruling chiefs) rights in the land; I agree that it was a hereditary interest, and an interest which would pass to their children. But this did not at all conclude the question whether the raiyats had any interest. The fact is, that land is capable of having a number of interests in it. As between the Government and the zamíndár, if the Government surrenders its rights in the land to the zamíndár, the zamíndár becomes the actual proprietor of that land so far as the Government is concerned. But when we come to the question whether the raiyats had anything to say in reference to this land, that is another thing altogether. What do we find was the old customary land-law of India? I am quoting from memory now, but even Menu lays down that ownership in land arises from the reclamation of land, and I think you will find that even that right of ownership was not a full and absolute dominion, but that a right, subject to the rights of Government and some other persons, did arise on the reclamation of land, according to the old custom of Hindustan, and so we find it to be the feeling of the country to this day.

"Zamíndárs held certain large estates, and under them were the raiyats, and the raiyats from time to time reclaimed jungle and then held lands under the customary law of India. What was that customary law? The first thing was that, having been recognised as raiyats, they had a right to sit there at pargana rates. That right did not interfere with the right of property of the zamíndárs. The right of the zamíndár was absolute as between himself and the Government. But those rights did not cover all the rights in the land, as other people also had rights in that land. My hon'ble friend has relied on a passage from a judgment of Lord Lyndhurst. Now this passage which has been read comes from the well-known case of *Freeman* v. *Fairlie*. It was a suit brought in the year 1828. The decision in it was that land in Calcutta descended as a free-hold inheritance to the heir, and did not pass to the personal representative. That was the point Lord Lyndhurst had to consider, and his remarks were all made in reference to it. It appears that one Susannah Oldham died, leaving three houses in Calcutta. These three houses she bought from different people. But, as was the custom in those days, she got a pattá from the Collector of Calcutta. She died and left an executor, and differences having arisen between this person and those interested, the question arose whether the houses passed to the heirs or the personal representatives, whether this was real estate or whether it was personal estate. They went before the Master and the Master made his report, and it was decided that the English law applied, and that it went as a free-hold inheritance. This is a very interesting question, but has really nothing to do with the question now under discussion.

"It was contended in that case that no interest which could be held in land in India could be said to amount to an estate in fee simple according to English law, although English law had been introduced to some extent into Calcutta, and it was said that all holdings under the East India Company were too precarious to constitute so high an interest as an estate in fee simple, for various reasons which may be read at length in the report.

"It was *a propos* of these contentions that Lord Lyndhurst remarked that a perusal of the Bengal Regulations had led him to the conclusion that the interest of the zamíndárs in land under those Regulations was an absolute proprietorship and not such a precarious or temporary interest as had been suggested. His object was to show that, if such an interest was vested in an Englishman in a place where English law applied, it would be an estate of inheritance in land descendible to the heir, and not something in the nature of a chattel interest divisible among the next-of-kin. If Lord Lyndhurst had before him a question as to the relative position of zamíndár and raiyat in a zamíndárí, his decision would have been entitled to the highest respect,

and the hon'ble and learned mover might well be uneasy if he had gone against so high an authority. But in truth the passage cited is only another instance of the danger of citing isolated passages from judgments without considering the point discussed in those judgments.

"In the *résumé* given by Mr. Justice Seton-Karr of the position of the landlord, just read by my hon'ble friend, he points out that the zamíndár has a right to the rent which is barred by no length of time. Here is a curious thing. If you have an absolute ownership, and if another person holds possession for twelve years, it becomes his own, because he has adverse possession. But the rule laid down by Mr. Seton-Karr was that, if it be in the possession of a raiyat, and the raiyat cultivated it, not alleging himself to be a zamíndár, he does not hold adversely. Now, although he sits there for sixty years, his title is not adverse, and the landlord does not lose his right even though he may omit to collect the rent. What is the reason? That originally the status of the raiyat and the zamíndár did not depend on contract at all. There was one person who engaged with the Government for the land and obtained an assignment, temporary or permanent, of the right of Government to obtain revenue from every bíghá of cultivated land not specially exempted by a grant from the ruling power; then squatters came and squatted; they never dreamt of saying they were zamíndárs, but simply raiyats; if the landlord came and asked for rent they would pay what their neighbours paid; if they reclaimed the land, they would ask to pay less, and generally would be allowed to pay less; but if they took possession of cultivated land, they would have to pay the pargana rate or go away. But it was not possible to say that these persons were anything else but raiyats. Tenancy in England was by contract, and if a person comes and sits on your land and cultivates it, and has not made an express or implied contract, his possession is adverse to the landlord, and after twelve years he becomes owner of the land free of any obligation to pay anything to anyone. But this is not the case here. I know that Sir Barnes Peacock and other great authorities, who have taken a strictly English view of the question, have said that the relations between the zamíndár and the raiyat are similar to those of landlord and tenant in England. But many of the Judges—Messrs. Steer, Jackson, Seton-Karr and others—held that the relation of zamíndár and raiyat could be established independent of any contract. If that is so, it throws great light on the subject, and I think there are many other things which point to the conclusion that permanent cultivation of land in India by a person other than a zamíndár was sufficient evidence of a raiyati holding according to custom.

"There has been much confusion arising out of the use of the term 'actual owner' or 'actual proprietor of the soil.' In many zamíndáris there is a zamíndár, a patnídár, a durpatnídár, and under them a *jangalburí* or an occupancy raiyat. Each one of these is an actual owner or proprietor of such interest as he has in the soil.

"But say the opponents of the Bill—how about the waste-lands? There were no raiyats on the waste-lands. The zamíndárs by the Permanent Settlement became, as to the waste-lands, owners of their own former rights (if any) *plus* the Government rights, and as no one else had any rights they must have become absolute owners in the fullest sense, and able to do what they liked with their own.

"The answer is that the position of the waste-lands was not changed by the Permanent Settlement, save so far as the rights of Government were transferred to the zamíndárs. If, therefore, before the Permanent Settlement raiyats who reclaimed or settled on waste-land acquired any rights, raiyats who did the same thing after the Permanent Settlement would acquire the same rights and occupy the same status as they would have acquired or occupied had they settled before the Permanent Settlement.

"No doubt the incidents of a customary holding may be varied by actual contract (unless prohibited by law). But all original contracts which I have seen between zamíndárs and raiyats about to reclaim waste-lands have been contracts whereby the raiyats have obtained a right to sit at lower rates, either

permanently or for a time, than the ordinary rates prevailing on the neighbouring cultivated lands. I have never seen or heard of any case in which a raiyat undertook to reclaim waste-lands on worse terms than the customary terms on which permanent tenants of adjacent cultivated lands were then holding.

"But I have seen and I have heard of many cases in which, from the power of the zamíndár and the weakness and ignorance of the raiyat, the successors of those who had reclaimed land on specially favourable terms since the Permanent Settlement have been unable to enforce or maintain those terms and have been reduced to the level of ordinary raiyats.

"It may be taken that all land reclaimed since the Permanent Settlement has been reclaimed either on the old customary terms without a written engagement, or on a written engagement more favourable to the raiyat than the customary terms.

"I will only make one or two further remarks. The most effective part of the hon'ble member's on-slaught on this question was his attempt at what I may call the *argumentum ad Governmentum*, in which he said that the Government had treated the raiyats on their khás maháls or Crown lands just as the zamíndárs had treated them, or rather worse, and that they had declined to recognise in the raiyats any higher rights than the zamíndárs had recognised, and that they had mercilessly enhanced their rents and evicted them if they did not consent.

"It is no argument to say that the Government in various departments have done the same thing. In speaking of the Government, it must be remembered that there are many departments of the Government. From one point of view, you may have the Government sitting here consulting for the general good of the country and taking broad views of the question. On the other hand, there is a department which represents the Secretary of State, who represents the positive right of the Government in their property, just as in the case of Crown lands in England. When you deal with the Government in this capacity, I am sorry to say they don't seem to be the same kind of people as the Government of India in its broader capacity. I have seen the same thing at home. I have seen what I considered to be very hard and unjust conduct on the part of the Commissioners of Woods and Forests—conduct which was worse than would be expected of any private proprietor. They are in the nature of a Corporation, which has to preserve the rights of the Crown, and they come to look on every body else as natural enemies, who are endeavouring to deprive the Crown of its rights; and I have seen a good deal of the same sort of thing in India, and I am quite prepared to believe it is true, as many of the Government officials must know, that these officers often think it their duty to exact as much as they can. I am only suggesting this as an explanation of what has been said of the dealing of officials in Government and Court of Wards' estates. Suppose there is a substratum of truth in the figures brought forward by the hon'ble member, and it should be proved that enhancements to the extent of one hundred per cent. have been made on these unfortunate Government estates, I think the Board of Revenue, on learning of the existence of such things, would put a stop to them. But if the state of things is as has been stated to the Council it is certainly very deplorable. But it furnishes an argument against my hon'ble friend. If the Government officials, who have no personal interest in them, would do such frightful things by abusing the special summary powers entrusted to them, how much more will the managers of zamíndárs do them?

"I have not had time to go through the details of the Bill; but I think several grave and serious questions arise in reference to it. The question of compensation for disturbance and other important questions require serious consideration, and I offer no opinion upon them at present. The practical working of the different clauses of the Bill have to be considered.

"But the great thing is to try and secure, as nearly as possible, absolute data on which to proceed. I do not believe in the beneficial effects of any form of words, unless you have facts to act on. I believe that, before the present

state of things can be set straight, a full record-of-rights will have to be undertaken. I know that is not a thing which my friend will be pleased to hear. But I do say that nearly one-half the litigation in Bengal arises from the impossibility of ascertaining facts. You cannot get at the rights of any question unless you can get at the real facts. Any number of papers may be produced,—jamabandís, jama-wásil-bákis and the like,—but they are frequently worth nothing. I don't say the zamíndárs have anything to do with the presentation in Court of untrustworthy documents; many of them are very respectable people, but the *náibs* or managers think nothing of fabricating a set of papers. Now, the records being untrustworthy and the oral evidence very worthless, it is very difficult for the Courts to decide the points which come before them. I believe most of the litigation will be rendered unnecessary if you can get in Bengal a real record-of-rights, and if you get rent receipts of a trustworthy character. All these things will practically diminish litigation, and then, if you get a settlement of rents by establishing tables of rates or otherwise, which would last for a considerable time, I do not think the zamíndárs will have any great difficulty in recovering rents, for the rent will be definitely settled. Under these circumstances, there will be very little use in false evidence, and judgment will be given, and in a month or so the holdings in default will be put up for sale. I think improvements can be made, for I think zamíndárs should have all reasonable facilities for the recovery of rent which can be given to them without causing oppression to the raiyats. If anybody can show any way of giving increased facilities in this respect, I think the zamíndárs ought to have the benefit of it.

"The Government demand is constant and inexorable, and the Government have kept in their own hands a summary and effectual process for realizing it from the zamíndár. The Government is bound, if possible, to enable the zamíndár to realize the assessment promptly from the actual cultivator. Had the Government from the first insisted that an authentic Government record of rights and rates should be kept up, and that a reliable system of recording payments should be enforced, there would be no difficulty in complying with the demand of the zamíndár; and it would be the clear duty of Government to do so. But unless the Government will resolutely determine to face this matter, it will never be able to do equal justice to the zamíndár and the raiyat: to give the raiyat proper protection is one duty; to give the zamindár the power to realize punctually from the raiyat that rent or revenue which the Government exacts so punctually from the zamíndár is another duty. Neither of these duties can ever be effectually performed without an authentic record of rates and payments, and if this Bill be not supplemented by vigorous executive action in this direction, it will join the long list of Acts and Regulations of high-sounding promise and little performance of which raiyat and zamíndár have been the subject."

The Hon'ble Mr. THOMAS said:—"My Lord, I had wished to speak generally in support of the Bill, from experience of like tenures in other parts of India; but, looking to the lateness of the hour and the number of speakers yet to follow, I think I shall best consult the convenience of this Council by forbearing to do so: but with reference to the quotation made by the Hon'ble Kristodás Pál with a view to show the pressure of land assessment in the Madras Presidency, from which I come, I may be allowed to say just the one word that his figures are not normal figures, and refer to the great famine time, and the uncollected arrears are the arrears mostly of men and families who had died of famine, and have no sort of relevancy to the normal pressure of the assessment there."

The Hon'ble MR. REYNOLDS said:—"I desire to thank Your Excellency's Government for the introduction of this Bill. I think it superfluous to enter upon any discussion as to the acknowledged and proved necessity for legislation upon the rent question, after a perusal of the papers which have been laid before us in connection with the Bill. It is conclusively shown by those papers that this necessity has been recognized by the Government, by the Courts of law,

by the officers engaged in revenue and administrative duties, by the zamíndárs and other rent-receivers, and by the cultivators and other rent-payers. The Bill before the Council is the result of long deliberation and patient enquiry; it is an honest attempt to hold the balance impartially between interests which, though they are really identical, are apt to come into apparent conflict at various points of contact, and the authors of it have resisted the temptation to legislate upon new lines, or to put forward new theories of the rights of the different classes of the agricultural population. I cannot agree with the Hon'ble Mr. Kristodás Pál in the estimate which he has passed upon the Bill. I have studied the rent question in Bengal for nearly as many years as he has; I have studied it, not merely in books, but by practical experience of its working, and I have striven to make myself acquainted with its real facts and bearings; and I say with confidence, that the feature which I most admire in the Bill is the eminently conservative and constitutional character of its main principles. In some points of detail I venture to think that this character has not been maintained, and I shall not shrink from noticing these points in their proper place. But, taking the Bill as a whole, it is essentially a measure framed in accordance with the ancient prescriptive law of the country, and, as such, it ought to be acceptable to those who think that the most useful, and certainly the safest, province of legislation is to formulate and crystallize those principles which have been tested by long experience, and accepted by general consent. I think it useless to speculate upon the question whether, in ancient times, the right of property in the soil was vested in the Sovereign, in the zamíndár, or in the raiyat. That question has been discussed with more learning than I could bring to bear upon it by my hon'ble friend Mr. Evans, and I imagine he would agree with me in thinking that the expression 'right of property', when used in such a connection and employed in its modern and European sense, is altogether misleading, and connotes an idea entirely foreign to the age and the country. But there are two great principles which underlie the question of agricultural tenancy in these Provinces,—principles which took their rise in a remote antiquity, which, though they may not have been formally embodied in any statute, are written in the hearts of the people, which were not affected by the legislation either of 1793 or of 1859, and which have survived the lapse of years and the rise and fall of dynasties. These two principles are, first, that the resident raiyat cannot be ejected from his holding in the village lands so long as he pays the established rent, and, second, that it is the right and the duty of the ruling power to determine the rent payable by the raiyat to the zamíndár. I observe with much satisfaction that not only are these principles recognized in the present Bill, but that the Bill is based upon them, and that its provisions are such as naturally spring from the acceptance of them.

"Chapter II of the Bill is of comparatively little importance in Bengal Proper; but in Bihár it will be extremely valuable, if full use is made (as I trust will be the case) of the power to make a survey and register of *khámár* lands.

"In Chapter III, section 15 reproduces the present law regarding the presumption arising from twenty years holding at an unchanged rent. This presumption was first introduced by the Act of 1859, and I have always thought that it bore somewhat hardly on the landlord, and especially on two classes of landlords who seem entitled to favourable consideration,—landlords who have dealt leniently with their tenants in past years, and landlords who have purchased their estates at sales for arrears of revenue. I was at one time disposed to recommend that the presumption should be removed altogether; but I have since seen reason to modify this view, and I am now content that the section should stand, as it will always be in the power of the landlord to apply, under chapter XII of the Bill, for the preparation of a record-of-rights on his estate. It has, I think wisely, been determined to limit the sections regarding registration to tenures. There is no doubt something attractive in the proposal of the Rent Commission (which was retained in the Bill prepared by the Government of Bengal) to extend the same procedure to occupancy holdings. But the country is not ripe for this. There is no agency for carrying the measure into effect, and the law would be either a dead letter, or would be worked to the prejudice of ignorant and helpless cultivators.

"The short chapter on patní tenures contains nothing which seems to call for remark. The sale procedure, as specified in the schedule, will doubtless come under the consideration of the Select Committee. The law on this matter needs amendment on various minor points, and the Bengal Government Bill contains a number of useful suggestions and recommendations.

"Chapter V, which is really the keystone of the Bill, deals with the important subject of the occupancy-right of the tenant, and of the landlord's right of pre-emption. It avoids the fatal mistake committed in Act X of 1859 (or at least in the interpretation of that Act which has generally been accepted), of limiting the right to those particular fields which may have been held in continuous possession. It defines the settled raiyat as the tenant who has held raiyati land for twelve years in any village or estate; and it declares that such settled raiyat shall have a right of occupancy in any raiyatí land held by him in that village or estate. It may be objected that the proposed definition is at once too wide and too narrow: too wide, because the cultivation of land in the same *estate* was never held to confer the position of a khudkásht raiyat: and too narrow, because a much shorter term than twelve years might reasonably be taken as evidence of settled occupation. The definition may in some measure be looked upon as a compromise: and the correspondence shows that it is not the definition originally proposed by the Government of India. But what we have to consider is the practical effect which this or any other definition will produce. Assuming the proposition (which indeed cannot be controverted) that the resident raiyat has a right of occupancy in the village lands, what is the definition which will secure this right to the greatest number of those who ought to possess it, and extend it to the smallest number of those who are not entitled to enjoy it? I must own that I am not at present prepared to suggest a better definition than that provided by the Bill, and those who object to it may fairly be asked what they would propose to substitute for it. This, however, will certainly be one of the points upon which the Bill will be attacked: and it will be the duty of the Select Committee to see that the definition is not narrowed down by any limitations which would deprive it of its due significance or its proper effect.

"There is, however, one section in this chapter against which I feel bound to record an emphatic protest. Section 48 provides that the occupancy-right may be acquired by grant from a proprietor or permanent tenure-holder. I think I can understand the reasoning which may have led the framers of the Bill to insert this provision, but the section is, nevertheless, of a revolutionary and dangerous character, and any extension of the occupancy-right which may result from it would be too dearly purchased. It is practically an admission of the vicious principle that the occupancy-right may be made a matter of bargain or contract between landlord and tenant. The occupancy-right cannot be granted by the landlord, for it is not his to grant: it is essentially inherent in the status of the resident cultivator.

"Of the incidents of the occupancy-right, the only one which calls for notice is that which makes the right transferable. It seems probable that the right was not originally transferable; but the custom of transfer has become common, and it is for the advantage of both parties that the right of transfer should be formally legalized. The landlord's interests are sufficiently protected by the power of pre-emption which the Bill gives him. It has been said that the result of a general power of transfer will be, that the land will pass out of the hands of the cultivators into the possession of middlemen and mahájans. But experience does not justify this apprehension. The transfers which already occur every year may be counted by thousands; but the purchasers of the holdings are men of the same class as the sellers. There are at least two classes of occupancy-raiyats who possess and have long possessed an acknowledged and recognized right of transfer: the guzashtádárs of Shahábád and the thání raiyats of Khurda in Púri. It is certain that with neither of these classes has the power of transfer had the effect of making the lands pass out of the hands of *boná fide* agriculturists.

"The sections regarding the right of pre-emption must be taken in connection with those relating to merger, and the Bill seems to me somewhat defect-

ive in that it fails to explain clearly the nature of the landlord's title in a holding which he may have purchased The draft Bill of the Bengal Government contained an express provision that the doctrine of merger should not operate to convert a holding, when purchased by the landlord, into *khámár* land. The present Bill provides that, if the landlord lets the land, he must let it as an occupancy holding; but the Statement of Objects and Reasons explains that, if he pleases, he may keep the land in his own hands, and cultivate it by his servants or labourers. This is a serious departure from the rule of the old Regulations. By Regulation VIII of 1793, the zamíndár was not only permitted, but required, to let the lands of his estate; he had no power to hold them himself. If, indeed, a zamíndár may hold raiyati land in this way as long as he pleases, it is practically equivalent to the conversion of the land into *khámár*. Section 56 of the Bill will undoubtedly be evaded: and the whole question of the exact nature of the landlord's rights in a purchased holding ought to be carefully considered by the Select Committee.

"By chapter VI, the maximum rent of an occupancy-raiyat is not to exceed one-fifth of the value of the gross produce in staple crops. It ought to be clearly understood that this is a limit and not a standard: for, in the Eastern districts, any such standard as one-fifth would involve an enormous enhancement. I am also inclined to think that the period of ten years provided by section 78 is too short. The Famine Commission suggested thirty years. This is possibly too long; but, if it takes twelve years for a raiyat to become settled, twelve years is surely not too long for him to remain free from claims for enhancement, and the Select Committee might consider this point. The provisions regarding a table of rates appear reasonable and fair; but I doubt whether any extensive use will be made of them. Careful enquiries on this subject have lately been made by the Government of Bengal in a number of selected areas, and the general results tend to the conclusion that tables of rates based upon classifications of soil cannot ordinarily be prepared in the Lower Provinces. I anticipate that the provisions of chapter XI will be found more generally useful than those which relate to the preparation of a table of rates.

"I should be glad to see the provisions of section 79 extended so as to correspond with those of section 74. If a raiyat is paying more than the established rate, this ought to be a legitimate ground for an application for reduction. I have noticed the references to this point in the correspondence, and I am aware that the omission is not an oversight; but I think the matter calls for further consideration.

"In section 81 it is to be noticed that, though at present the landlord's share is in some cases nine-sixteenths of the *grain*, the whole of the straw and chaff belong by custom to the tenant. To give the landlord half the gross produce would, therefore, be giving him a larger share than he is entitled to.

"The prices spoken of in section 83 are market prices; but it is to be observed that section 75 refers to the price at which the raiyat sells his crops, and this is a very different thing from the market price. I presume the tables mentioned in section 83 are intended to assist the Courts in determining cases in which the limit referred to in section 75 comes into play; but if this is the intention, it would be well to insert words to keep in mind the fact that the price at which the raiyat sells his crop will ordinarily be fully twenty per cent. below the quoted market price of that crop in the bázár.

"The above remarks refer mostly to matters of detail; but my objections to chapter VIII are of a different character. I must own that this is the part of the Bill which I least like or approve. Short as it is, it probably contains more innovations than the rest of the Bill put together. I object strongly to the title of the chapter. The ordinary raiyat in Bengal is the occupancy-raiyat; and it is a dangerous novelty to countenance language which implies that the status of the non-occupancy-raiyat is the rule, and that occupancy-raiyats form an exceptional and privileged class. The clause relating to compensation for

improvements is an innovation, but a comparatively harmless one, as a non-occupancy-raiyat would never make improvements, unless he were protected by a lease. But the proposed compensation for disturbance introduces an entirely new element into the agricultural laws of the country. We have not the least experience to show how this provision would work in India, and the principle of it seems to me to be objectionable. Either the landlord has the right to eject the tenant or he has not. If he has the right, he should not be required to pay compensation for exercising it; if he has not the right, no money payment ought to be sufficient to give it him. Section 91 refers to the limit fixed by section 119, which provides that the rent of an ordinary raiyat or under-raiyat shall not exceed five-sixteenths of the value of the gross produce of the land. I question the wisdom of attempting to fix by law the limit of an under-raiyat's rent. Such a law is certain to be disregarded, for it is not the interest of either party that it should be observed. But the provision which puts the non-occupancy-raiyat on the same level as the under-raiyat, and on a different level from the occupancy-raiyat, as regards the rent which he may be called upon to pay, is open to far more serious objection. It is an unconstitutional proposal; for it implies that the occupancy-raiyat is entitled to hold at a privileged rate of rent, and this is not, and never has been, the law of Bengal.

"I am fully alive to the difficulties which surround both these questions,—the question of the under-raiyat, and the question of the non-occupancy tenant. I am aware that the state of things has entirely changed since the days when the paikásht raiyat could practically dictate his own terms; and I do not object to a reasonable modification of the law to suit the altered condition of affairs. But I disapprove of any infringement of the sound principle that no raiyat, whether he has the occupancy right or not, can be required to pay more than the established rate of rent; and I therefore think that, in areas in which a table of rates is in force, it should be applicable to both classes of raiyats alike.

"In chapter IX, the provisions of section 98 regarding the instalments of a raiyat's rent seem to me to be sound in principle, but to require some verbal modification. As the Hon'ble Mr. Kristodás Pál told us in his speech, monthly instalments of rent are in accordance with the custom of the country, and should not be interfered with; but interest should not be chargeable, nor should a suit lie for arrears, unless default continues for at least three months. This is the practice of the Government in regard to its own revenue. In all the dowls of the Permanent Settlement which I have seen, the revenue is made payable in monthly kists; but no measure for enforcing payment can be taken except at the quarterly days of payment. The provisions of this Chapter regarding receipts and deposits of rent seem to me to be excellent. I am inclined to doubt the expediency of retaining section 114; and I should prefer to make the division absolutely final. Indeed, the provisions of sections 114 and 115 seem to me to be inconsistent with each other. Section 118 does not go nearly far enough. It is not sufficient to say that the danabandí papers shall be filed in the Collector's office. It should be declared that these papers are to be produced on the trial of any suit for arrears of the rent of the land, and that the suit shall be decided only in accordance with the entries in the papers.

"In chapter X, the wording of section 133 requires modification. There seems to be a confusion between revenue-free land and rent-free land. I know of no reason why a landlord should not measure revenue-free land if he is in receipt of the rents. On the other hand, he ought to be allowed to measure rent-free land if it is within the limits of his revenue-paying estate. The sections regarding the appointment of a manager on behalf of joint-owners have my full approval, except that I would suggest the omission of the word 'jointly', in section 148. I see no harm in allowing the management to be restored to the owners in all cases in which it is shown that the estate will be managed by them without inconvenience to the public or injury to private right.

"Chapters XI and XII appear to me to contain excellent provisions for settling disputes and avoiding litigation. I trust and expect that these provisions will be extensively made use of.

"The chapter on distraint is of no great practical importance in Bengal Proper, where distraint is comparatively seldom resorted to; but in Bihár it will be of great value and use: and I attach special importance to sections 185 and 186. I have heard to-day with a good deal of surprise that illegal distraint does not exist now-a-days in Bihár. The fact is flagrant and notorious. The abuses and oppressions which have been and are still committed in Bihár under colour of the law of distraint require to be put down with a strong hand: and nothing short of an express declaration that they are offences punishable by the criminal law will be sufficient to suppress them.

"In the remaining chapters of the Bill I find nothing which appears to me to call for special remark. In what I have said, I have commented with some freedom on what seem to me to be errors or omissions in the Bill. But I must repeat that, upon the whole, I look upon this as an excellent measure, broad and liberal in its scope, constitutional in its principles, impartially fair to the different classes whom it affects, and calculated to apply a practical remedy to the evils of which landlords and tenants alike have lately complained. If there are any members of the landlord class who consider that the Bill unduly interferes with their incomes or curtails their privileges, I believe they might safely be challenged to point to any essential part of the Bill (I do not speak of every point of detail) which touches any receipts to which they are justly entitled, or any privileges which they have not usurped. I repeat that this Bill is (in all its main features) a constitutional Bill: its object is to establish on a settled foundation, and to express in unmistakeable language, principles which have always been part of the unwritten agricultural law. It is the special duty of the Government to undertake this legislation, not merely in the general interests of the country, not merely for the sake of public peace and public prosperity, but because the system by which the old law of tenancy has of late been overridden and partially obliterated has been, in some measure, the unforeseen and unintentional effect of our own legislation in the past. There can be no more striking instance of this than the example afforded by Act X of 1859. That Act was intended to be the agricultural charter of the raiyat. It has been twisted and perverted into a means of overthrowing the very rights which it was its object to establish, and this has largely been done by decisions of our own Courts of law. A day may come when the present Bill will be unsuited to the altered circumstances of the country. The Government will have the same power then, as it possesses now, of legislating for the protection and welfare of the dependant taluqdárs, raiyats and other cultivators of the soil, and this power it will not hesitate to use when the occasion shall arise. But for the present, and under the conditions which prevail to-day, the Bill before the Council appears to me substantially to provide a remedy for acknowledged evils, a redress of agrarian abuses, and a recognition of prescriptive rights, and I shall heartily and thankfully give my vote for referring it to a Select Committee."

The Hon'ble DURGÁ CHARAN LÁHÁ said:—"I will make a few remarks, confining myself to some of the principal changes contemplated by this Bill.

The object of chapter II seems to be to restrain the practice said to be prevailing in Bihár of converting raiyatí lands into khámár or zirat lands. I must say that, if it exists, it is only confined to that Province. In Lower Bengal, I am prepared to say, there is no desire on the part of landholders to increase the area of khámár lands. On the contrary, the landlords here retain with reluctance raiyati lands in khás possession, simply because they cannot find tenants for them.

"The provisions in chapter V relating to occupancy rights are entirely new, and I must say that these changes are most objectionable. The existing law or custom does not support them, nor are they based upon the enactments which were superseded by the Act of 1859.

"Under existing law, a tenant with a right of occupancy has the right of holding his tenure so long as he continues to pay his rent, which, however, is liable to enhancement or reduction to fair and equitable limits under certain

conditions. On failure of payment of such rent, he is liable to eviction under a decree of Court. He does not appear to have ever enjoyed a status higher than this. But it is now proposed to confer on him the status of a permanent tenure-holder, without fixity of rent, at the cost of the rights of the zamíndár. The right of pre-emption reserved for the latter will not serve the purpose of restraining transfers to objectionable tenants, because, in point of fact, it will involve an unnecessary outlay, for which he can never expect anything like an adequate return. Again, a settled raiyat, as described in this chapter, may have a right of occupancy in any land in the village without any reference to the period of his occupation, and in spite of any contract under which he held it.

"These and other provisions in this chapter introduce a radical change in the established law, and are calculated to create an unnecessary conflict in the relations existing between landlord and tenant.

"In chapter VIII, which deals with the ordinary raiyat, the Bill confers on him a status which is entirely novel. The result of the extension of his right—one which is not unforeseen by the framers of the Bill—will be the multiplication of subordinate tenures, which would have the effect of defeating the very object for which the provisions have been made. But it is stated that the Government will put down the evil by future legislation. To my mind it seems to be more judicious not to allow the mischief to arise, than to create complications, and then to find means to check them.

"Then as to the question of enhancement of rent. The Bill lays down that it is to be effected either under a table of rates, or, where there is no such guide, at the discretion of the Court at fair and equitable rates within certain limits, or by contract to be approved by a revenue-officer. As to the first course, I submit it will be impracticable, and, even if practicable, it will never be a safe and satisfactory guide. As to enhancement at the discretion of the Court, the matter remains exactly where it now is, with the addition of a restriction to the exercise of such discretion. And as to the last of these means, the validity of a contract being made conditional on the approval of a Government officer, a private settlement between landlord and tenant becomes at once a matter of considerable difficulty.

"In section 93 of the Bill the provision for compensation for disturbance is quite foreign to this country, and its propriety is questionable.

"The effect of this innovation will practically be to preclude the landlord from all possibility of obtaining from the tenant a fair share of increment in the value of produce.

"The subject is so vast and complicated that I cannot hope to do full justice to it. I have barely touched upon a few of the salient points embraced in the Bill, in order to show that the Bill, as it has been framed, is repugnant to the spirit and letter of the Permanent Regulations, which had guaranteed the rights of both zamíndárs and raiyats, and to actual facts. It gives no practical facility for the recovery of rent, nor satisfactory means for enhancement, where enhancement may be fair, reasonable and perfectly justifiable. On the other hand, it enacts provisions intended, no doubt, for the benefit of the raiyat, but which, in course of time, will be found to operate prejudicially to the interest of the actual cultivators of the soil.

"In conclusion, I am inclined to think that this Bill will, in practice, do more harm than good, by destroying good feeling between the zamíndár and the raiyat, and putting them perpetually at logger-heads. When such is manifestly the tendency of the Bill, a departure from the existing law in a way that will unsettle the relations between landlord and tenant cannot but be regarded as an experiment of questionable character and doubtful efficacy."

The Hon'ble MR. HUNTER said:—"My Lord, at the present stage of the Bill, I intended to say only a few words, and from a special point of view.

The hour is now so late that I shall probably consult the wishes of the Council, if I curtail even those few words within the narrowest compass. I agree with the general objects of the Bill; but there are three points which I hope the Select Committee will carefully consider. These are, first, that attempts to interfere by statute, as opposed to custom, between tenants-at-will and the laws of supply and demand have seldom been successful. Second, that, although we may declare that rents shall not exceed five-sixteenths of the produce, the laws of supply and demand will, in the case of the tenants-at-will, be too strong for a hard-and-fast line of this sort. Third, that the compensation for disturbances, amounting to ten times the enhancement of the rent, is excessive, and, as such, is unjust. I had intended to insist on these points at some length, but my hon'ble friend Mr. Reynolds has already dealt with certain of them; the debate has been unusually prolonged; and the hour is very late. With regard to the general principle, I shall at present only say that the legal difficulties and supposed guarantees which seemed to some thinkers to stand in the way of this measure have been effectually disposed of by the speech of the hon'ble and learned member who introduced the Bill. The instructions of the Court of Directors before the Permanent Settlement, and the express words of that Settlement, prove to my mind that the Government of that day neither intended to make a contract with the landholders which should prevent it from afterwards securing the rights of the tenants, nor made any such contract. Even if such a contract had been made, the hon'ble and learned member has shown that it could not interfere with the rights of the tenants who were no party to it. But after these and all other legal difficulties have been cleared away, the Bill has still to be discussed and judged of on other and quite different grounds. For this Bill is in reality an attempt to counteract by legislative devices a fundamental economic change which has taken place in the relation of landlord and tenant in Bengal. It is by economic tests that the measure must now be tried, for by its economic results it will hereafter be justified or condemned. This law endeavours to reinstate the cultivators in a security of tenure somewhat similar to that which they enjoyed at the time of the Permanent Settlement. The Permanent Settlement found two classes of cultivators in possession of the soil, one of which was protected in its possession by customary rights, the other by economic laws. The first class was the *khudkásht* or resident cultivators. The Permanent Settlement reserved the rights of this class, but omitted to define them. After two-thirds of a century had passed, Act X of 1859 endeavoured to discharge the duty thus left unfulfilled, and the present Bill completes the task which Act X began. The other class of cultivators at the time of the Permanent Settlement were the *Paikásht*, non-resident or migratory tenants, who held land in a village other than that in which they lived. These men, although possessing few rights, were at that time protected by economic laws more powerful than any legal system. There was then more land in Bengal awaiting cultivation than there were people to cultivate it. The demand was by the landlord for cultivators, not by the cultivators for land: and the cultivators had necessarily, under such circumstances, the best of the bargain. The charge of enticing away tenants by offers of land at low rent was frequently brought by one landholder against another, and had to be decided by the English head of the District. The increase of population during the past century has reversed this state of things. The population in many parts of Bengal has outgrown the soil. It is no longer the landlord who stands in need of tenants, but the tenants who are competing against each other for land. The same economic laws of supply and demand which protected the tenant at the time of the Permanent Settlement, place him, in many Districts, at the mercy of the landlord to-day.

"The present law endeavours to redress this state of things. To the *khudkásht* or resident tenants, who were protected by usage at the time of the Permanent Settlement, it gives the protection of a Code of clearly defined liabilities and rights. For the *Paikásht* or tenants-at-will, who were protected by the economic law of supply and demand at the time of the Permanent Settlement, it creates certain legal safeguards which it hopes will save them from the extreme pressure of competition. In doing so it attempts to set up a breakwater between the operation of supply and demand and a